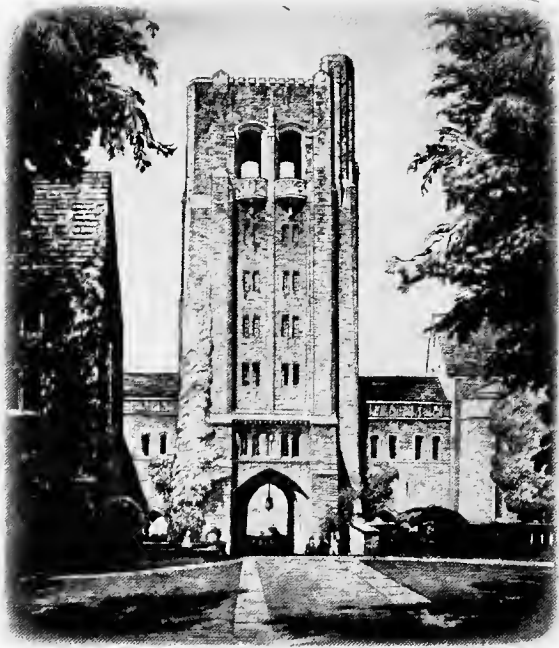




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## AN ACT FOR THE PUBLICATION OF THE CONSOLIDATED STATUTES.

[Passed the 19th day of April, 1884.]

Be it enacted by the Governor, Council, and Assembly as follows :

1. The Governor-in-Council shall cause the general Acts passed during the present Session to be arranged under appropriate parts and chapters, with the following words prefixed, that is to say :

“ An Act for Revising and Consolidating the General Statutes of Nova Scotia. Be it enacted by the Governor, Council, and Assembly, as follows :”

And the same shall be published in consolidated form, with a copious index, as soon as the same can be conveniently done ; and when the same shall be so published the Governor shall by proclamation declare the Acts so consolidated to be in force, and the same, or so much thereof as shall not then be in operation, shall thereupon and thereafter become and be in force.

2. The Act passed during the present Session, entitled, “ An Act to Improve the Administration of Justice,” to be cited as “ The Nova Scotia Judicature Act, 1884,” shall come into operation at the time mentioned in section 2 of said Act ; and notwithstanding anything in the preceding section of this Act, Chapters 89 and 94 of the Revised Statutes, Fourth Series, and all amendments thereof, shall continue to be in full force until the said Judicature Act shall come into operation, after which all parts of said Chapters 89 and 94, and all other chapters of the Revised Statutes, Fourth Series, and the amendments thereto, or any Acts passed during the present Session inconsistent with said Judicature Act or any Rules made under the authority of said Act, shall cease to be in operation, and be no longer

the law of the Province, and no part of said Chapter 94 or any other Act or chapter inconsistent with the said Judicature Act or any Rule made under the authority of said Act, shall be published in the Consolidated Statutes, Fifth Series.

3. The chapters shall be arranged in such order as the Governor-in-Council shall see fit, and sections may be re-numbered; and wherever sections of such chapters or of any Act are referred to by number, and wherever Acts or chapters are referred to by title, such changes may be made in the references to such numbers or titles as may be requisite to preserve the sense and meaning of the enactment; and wherever the same provision is repeated in two or more different chapters, the same may be omitted from one or more of such chapters, provided that such provision shall be retained in at least one of such chapters.

4. Chapters of such Consolidated Statutes may be brought into earlier operation by being published in the *Royal Gazette* by order of the Governor-in-Council, and chapters so published shall take effect from such publication, or from the time otherwise expressed in any proclamation of the Governor respecting the coming into operation of the same.

5. Acts passed during the present Session, to which the assent of the Governor has been or shall be given separately, shall come into operation from the time when by law or by the provisions of said Acts the same are appointed to come in force; but nevertheless such of said Acts as are of a general character shall be arranged among and incorporated with the Consolidated Statutes, under their respective parts and chapters.

6. All Acts in force on the first day of the present Session, which shall not have since expired, or have been repealed by some such separate Act as mentioned in the fifth section, or by some chapter published in advance as mentioned in the fourth section, shall continue in force, subject to any amendments which may have been made thereto by any separate Act or chapter published in advance, until the publication of the Consolidated Statutes by proclamation as aforesaid, and the Acts so continued in force shall upon and after the publication of the Consolidated Statutes be repealed and cease to have any force or effect.

7. The following chapters published in Appendix B. of the Fourth Series shall be omitted from the Consolidated Statutes, and not be published, as being exclusively within the jurisdiction of the Dominion Parliament :—

Chapter 22 of Revised Statutes, Third Series, "Of the Penitentiary."

Chapter 23, Third Series, "Of Sable, Saint Paul's, and Scatterie Islands, and of Light Houses."



Chapter 32, Third Series, "Of an Electric Telegraph for Military Purposes."

Chapter 75, Third Series, "Of Shipping and Seaman."

Chapter 79, Third Series, "Of Pilotage, Harbors, and Harbor Masters."

Chapter 82, Third Series, "Of Bills of Exchange and Promissory Notes."

Chapter 83, Third Series, "Of Currency," except section 5, which shall be incorporated in Chapter of the Consolidated Statutes.

Chapter 94, Third Series, "Of the Coast and Deep Sea Fisheries."

Chapter 116, Third Series, "Of the Law of Copyright."

Chapter 117, Third Series, "Of Patents for Useful Inventions."

Chapter 158, Third Series, "Of Illegal Enlistment."

Chapter 165, Third Series, "Of Combinations of Workmen."

Chapter 5 of the Acts of 1865, "An Act to amend Chapter 128 of the Revised Statutes."

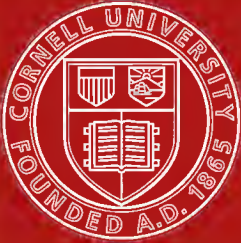
Chapter 17 of the Acts of 1866, entitled, "An Act to Enforce the Taking of the Oath of Allegiance."

Chapter 14 of the Acts of 1867, "Of Refining of Sugar and the Manufacture of Tobacco."

All other chapters printed and published in the said Appendix, not incorporated in their proper place in the Consolidated Statutes, shall be published together in the form of an appendix thereto.

Chapter 70, Third Series, "Of Railroads," shall not be published either in the Consolidated Statutes or any appendix thereto; but this omission shall not affect any existing railway charters, nor any contracts now existing in relation to railway construction in Nova Scotia.

8. Nothing herein contained shall affect or include local or private Acts.



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# ANALYSIS

OF THE

SEVERAL PARTS, TITLES, AND CHAPTERS,

CONTAINED IN THE

REVISED STATUTES,

FIFTH SERIES.

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# PROVINCE OF NOVA SCOTIA.

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IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED  
AND EIGHTY-FOUR.

---

## AN ACT

FOR REVISING AND CONSOLIDATING THE  
GENERAL STATUTES OF NOVA SCOTIA.

---

FIFTH SERIES.

---

**B**E IT ENACTED, BY THE GOVERNOR, COUNCIL AND  
ASSEMBLY, as follows:

## CHAP. I.

## PRELIMINARY TITLE.

## CHAPTER 1.

## OF THE PROMULGATION AND CONSTRUCTION OF STATUTES.

All acts public.

1. All Acts shall be deemed public, and may be declared on and given in evidence, without being specially pleaded.

Date of commencement.

2. The Clerk of the Legislative Council shall endorse on every act of the Legislature of Nova Scotia, immediately after the title of such act, the day, month and year when the same was by the Lieutenant-Governor assented to, or reserved, and in the latter case the Clerk of the House of Assembly shall endorse thereon the day, month and year when the Lieutenant-Governor has signified, either by speech or message to the Legislature, or by proclamation, that the same was laid before the Governor-General-in-Council, and that the Governor-General was pleased to assent to the same; and such endorsement shall be taken to be a part of the act, and the date of the assent or signification shall be the date of the commencement of the act, if no other date of commencement is therein provided.

Publication, how evidenced.

3. Printed copies of acts published in the *Royal Gazette* newspaper, in Halifax, or purporting to be published by the Queen's Printer for the Province, shall be evidence of such acts.

Repeal or alteration the same session.

4. Any act may be altered or repealed during the session in which it shall have passed.

Revived by express enactment only.

5. No act nor any portion of an act that shall have been repealed, shall be revived, unless by express enactment.

Proceedings under old acts continued under new.

6. Where an act shall be repealed in whole or in part and other provisions substituted, all persons acting under the old law shall continue to act as if appointed under the new law until others are appointed in their stead; and all proceedings taken under the old law shall be taken up and continued under the new, when not inconsistent therewith; and all penalties may be recovered and proceedings had, in relation to matters which have happened before the repeal, in the same manner as if the law were still in force.

Construction of acts; meaning of terms; general provisions.

7. In the construction of acts, the following rules shall be observed, unless otherwise expressly provided for, or such construction would be inconsistent with the manifest

intention of the legislature, or repugnant to the context, CHAP. 1.  
that is to say :

(a.) The words "Queen" or "Her Majesty" shall include Her Majesty, her heirs or successors.

(b.) "Lieutenant-Governor" or "Governor" shall include the Lieutenant-Governor, or other the chief executive officer or administrator for the time being carrying on the Government of the Province, by whatever title he is designated.

(c.) "Justice" shall signify Justice of the Peace, and "Stipendiary Magistrate" shall include Stipendiary Magistrates appointed by the Council of any Municipality or the Town Council of any incorporated Town, and wherever power is given to a Justice of the Peace to do any ministerial or judicial act, the same may be done by any Stipendiary Magistrate within his jurisdiction as such Magistrate.

(d.) "Prothonotary" shall include deputy prothonotary.

(e.) "Clerk of the Crown" shall include deputy clerk of the crown.

(f.) "Jail" shall mean County Jail; and where imprisonment is prescribed it shall mean imprisonment in the jail or other building within the County, in which debtors may be legally imprisoned.

(g.) "Warrant" shall signify warrant under hand and seal.

(h.) "Grantor" may be construed as including every person from whom any freehold estate or interest passes by deed; and "grantee" as including every person to whom any such estate or interest passes in like manner.

(i.) "Land," "lands," or "real estate" shall include lands, tenements, and hereditaments, and all rights thereto and interests therein.

(j.) "Goods" shall mean personal property.

(k.) "Issue," as applied to the descent of estates, shall be construed to include all lawful lineal descendants of the ancestor.

(l.) "Representatives" shall include executors and administrators.

(m.) "Wills" shall include codicils.

(n.) "Month" shall signify a calendar month, and "year" a calendar year; and "year" alone shall be equivalent to the expression "year of our Lord."

(o.) "Oath" shall include affirmation in cases where by law an affirmation may be substituted for an oath; and in like cases the word "sworn" shall include the word "affirmed."

CHAP. I. (p.) "Person" may extend to bodies politic and corporate as well as to individuals.

(q.) "Folio" shall mean ninety words.

(r.) "Sureties" shall mean sufficient sureties, and "security" shall mean sufficient security; and where these words are used one person shall be sufficient, unless otherwise expressly required.

(s.) Every word importing the singular number only may extend to several persons or things as well as to one person or thing; and every word importing the plural number only, may extend to one person or thing as well as to several persons or things; and every word importing the masculine gender only, may extend to females as well as to males.

(t.) All words purporting to give a joint authority to three or more persons, shall be construed as giving authority to a majority of such persons.

Authority to fill vacancies.

8. Where authority to make appointments to public situations is conferred, it shall include the power to fill up vacancies caused by death, resignation, removal, or refusal to act.

By-laws, power to revoke, alter and make.

9. Where power to make by-laws, regulations, rules or orders is conferred, it shall include the power to alter or revoke the same, and make others. No by-law shall be enforced if repugnant to law.

County or municipal charge how recovered.

10. When it is declared that any matter is to form a county or municipal charge, the expense shall be assessed, levied and collected with and by the same means as by law directed with regard to other moneys for county or municipal purposes.

Forms.

11. Where forms are prescribed, slight deviations therefrom, not affecting the substance or calculated to mislead, shall not vitiate them.

Sunday, &c.

12. If the day upon which an act is to be done shall fall on a Sunday, Christmas Day, or Good Friday, or any day set apart by proclamation for a public fast or public thanksgiving, the same shall be performed on the day following.

Hour of the clock 60° meridian.

13. Whenever, in the Statutes of the Province, any act is directed to be performed at any hour of the clock, such hour shall be held to mean the hour of the day as it shall then be at the sixtieth meridian of longitude.

Justices may administer oaths

14. Justices of the Peace may administer all oaths with regard to the taking of which no particular directions are given.

Quakers, &c., how sworn.

15. Quakers or Moravians, where an oath is prescribed, may, instead of taking the same, solemnly affirm in manner

used in their religion ; and such affirmations shall have the like effect, and render the parties taking them liable to the like penalties, if false, as attach to oaths. CHAP. 1.

16. Where a penalty shall be imposed, and no particular mode be prescribed for the recovery thereof, the same may be recovered in the name of any person who will sue therefor, in the same manner and with the like costs as if it were a private debt due such person, the nature of the offence being briefly stated in the summons, except that the foregoing provisions shall not apply to penalties recoverable before a justice or justices of the peace, or Stipendiary Magistrate ; and where no particular mode of applying the penalty shall be prescribed, the same shall be paid, one-half to the person who shall have sued therefor, and the other half to the overseers of the poor for the place where the offence was committed, for the use of the poor thereof. And where a penalty or part thereof shall be for the use of the poor, it shall be paid to the overseers of the poor for the place where the offence was committed, for the use of the poor thereof.

Penalties, how recovered and appropriated.

The imposition of a penalty shall not relieve any person from liability to answer for special damages to a party injured.

All penalties and forfeitures not exceeding forty dollars may be sued for and recovered before any two justices of the peace, but if incurred within the City of Halifax, before the City Court. Certain penalties where sued for.





# PART I.

## OF THE GOVERNMENT AND ITS ADMINISTRATION, AND THE SOCIAL ECONOMY OF THE PROVINCE.

### TITLE I.

#### CHAPTER 2.

##### OF THE GREAT SEAL OF THE PROVINCE.

1. There shall be a great seal of the Province, and it shall be hereafter lawful for the Lieutenant-Governor-in-Council to alter and change the Great Seal of the Province, from time to time, as to him shall seem fit and proper.

Governor-in-Council may change Great Seal.

2. Whenever the Lieutenant-Governor-in-Council shall see fit to alter and change the Great Seal, he shall issue a proclamation under his hand and seal directing when such change shall take effect, and specifying so far as can be the alterations made, and describing the Seal so ordered and proclaimed to be thenceforth used.

Change shall be proclaimed.

3. Until altered under the provision of this Chapter, the Great Seal at present in use shall continue to be the Great Seal of this Province.

Present seal continued until so changed.

---

## TITLE II.

### OF THE LEGISLATURE.

#### CHAPTER 3.

##### OF THE COMPOSITION, POWERS AND PRIVILEGES OF THE HOUSES.

1. The appointment of members of the Legislative Council of the Province of Nova Scotia shall be vested in the Lieutenant-Governor, who shall make such appointments in the Queen's name, by instrument under the Great Seal of the Province.

Appointment of Legislative Councilors.

## CHAP. 3.

Composition of the House of Assembly.

2. The House of Assembly shall be composed of thirty-eight members, of whom three shall be elected by the County of Halifax, three by the County of Pictou, and two by each of the other counties.

Qualification.

3. A person capable of being elected a member of the Assembly shall be a male British subject, of the age of twenty-one years and upwards.

What absence shall vacate seat.

4. Any member of the Legislative Council who shall be absent from his place therein for two sessions consecutively without the consent of the Lieutenant-Governor, shall vacate his seat as such councillor.

Seats, how vacated.

5. Any member of the House of Assembly may by written notice to the Provincial Secretary, or Speaker of the House if in session, vacate his seat.

Offices which vacate seats.

6. If any member shall accept any of the following offices, his seat shall become vacant, but he may be re-elected; that is to say, the offices of Attorney-General, Provincial Secretary, Commissioner of Public Works and Mines; but, if any person holding either of the above offices and being at the same time a member of the House of Assembly shall resign his office, and within one month after his resignation accept the same or any other of such offices, he shall not thereby vacate his seat in such Assembly.

Vacancies, how supplied.

7. Whenever a seat shall become vacant a writ shall be issued to supply the vacancy.

Speaker's seat, how vacated.

8. The Speaker may vacate his seat as Speaker and member, either by a declaration to that effect in the house, if in session, or by written notice to the Provincial Secretary, in which case a writ shall be issued to supply the vacancy.

Duration of Assembly not affected by death of Queen.

9. No General Assembly shall determine merely in consequence of the demise of Her Majesty.

Duration of Assembly.

10. The General Assembly shall continue for four years from the expiration of forty days next after the issuing of writs for any general election, unless sooner dissolved, and no longer.

Persons incapable of being members of either house.

11. No person shall be capable of being appointed to or of sitting or voting in the Legislative Council of this Province, or of being elected to or of sitting or voting in the House of Assembly, who shall at the time of such appointment to the Legislative Council, or at the time of his being nominated a candidate at such election, hold under the Government of this Province, or of the Dominion of Canada, any one of the following offices, that is to say: Judge of the Supreme or County Court, Judge of the Court of Vice Admiralty,

Judge of Probate or Registrar of Probate,  
 Postmaster or Deputy Postmaster,  
 Deputy Surveyor of Crown Lands,  
 Registrar of Deeds,  
 Prothonotary,

Clerk of the County Court,  
 Officer or clerk of the customs, or of colonial or light  
 duties, or person concerned in the receiving or managing  
 of any moneys to be collected under any of such depart-  
 ments,

Any person employed by the Dominion Government, or  
 under the same, in receiving or collecting any part of  
 the revenue, or in guarding, protecting, or securing the  
 same,

Any person acting for or on behalf of the Dominion  
 Government, or of any departmental officer thereof, in  
 the capacity of agent, subordinate or official represen-  
 tative,

Medical Superintendent of the Provincial Hospital for the  
 Insane,

Supervisor of great roads.

12. Any member of the Legislative Council or of the  
 House of Assembly, accepting any one of such offices after  
 his appointment or nomination shall vacate his seat thereby.

Members accept-  
 ing office vacate  
 their seats.

13. The appointment, nomination, election, or return,  
 of persons disabled as hereinbefore mentioned, shall be  
 void; and every person so disabled who shall sit or vote as  
 a member of the Legislative Council or of the House of  
 Assembly, shall forfeit four hundred dollars for every day  
 he shall so sit or vote, to be recovered in the Supreme  
 Court by any person, and in his own name, who will sue  
 therefor.<sup>4</sup>

Appointment,  
 election, &c.,  
 void.

14. No person referred to in the eleventh section of  
 this Chapter shall be deemed eligible to or qualified to sit  
 in either branch of the legislature of this Province, unless  
 he shall have resigned his office or employment before the  
 day of nomination or of his appointment to a seat in the  
 Legislative Council, and signified in writing such resig-  
 nation to the Provincial Secretary.

Effect of resigna-  
 tion of office.

15. Nothing in the four next preceding sections of  
 this Chapter shall be held to apply to or in any manner  
 affect any departmental officer in the Provincial Govern-  
 ment, or any surveyor of shipping, fishery warden, officer  
 of militia, person employed in taking the census, or any  
 person acting in the capacity of Queen's counsel or justice  
 of the peace.

Exceptions.

## CHAP. 3.

Members of Senate and House of Commons ineligible for Legislative Council or House of Assembly.

Member of Legislature becoming candidate for House of Commons to vacate his seat.

Penalty for such person sitting or voting.

Persons disqualified under Dominion Election Law not eligible.

Meaning of terms in this chapter.

Legislature of Nova Scotia to have same privileges as Parliament of Canada.

16. No person being a member of the Senate or House of Commons of Canada shall be capable of being appointed to or of sitting or voting in the Legislative Council of this Province, or of being elected to or of sitting or voting in the House of Assembly thereof: and if any person, being a member of the Legislative Council or of the House of Assembly of this Province, shall accept a seat in the Senate, or be elected as a member of the House of Commons of Canada, or shall cause, suffer or permit himself to be nominated as a candidate for the representation of any electoral district in the House of Commons of Canada at any election of members to serve in such House of Commons, he shall thereby vacate his seat, and shall be incapable of sitting or voting in the Legislative Council or House of Assembly, as the case may be, unless he shall be thereafter re-appointed to such Legislative Council or re-elected to such House of Assembly.

17. If any person who by the next preceding section of this Chapter is made incapable of sitting or voting in the Legislative Council or House of Assembly does nevertheless, while so incapable, so sit or vote, he shall forfeit the sum of one thousand dollars for every day he so sits or votes, to be recovered in the Supreme Court by any person who will sue therefor.

18. No person who is declared to be incapable or who has become incapable of being elected to or of sitting in the House of Commons of Canada by or by reason of the judgment or finding of any tribunal instituted or proceeding under the authority of "the Dominion Controverted Elections Act of 1874" or any other act of the Parliament of Canada relating to the trial of controverted elections of members of the House of Commons of Canada, shall be capable of being a candidate for or of being elected or returned to the House of Assembly, or of being appointed to the Legislative Council, so long as such incapacity or disqualification shall continue.

19. In this Chapter, unless the context precludes such construction, the word "house" or "houses" shall mean House or Houses of the Legislature of Nova Scotia, and the word "committee" shall mean any standing, special or select committee of either house, or any joint committee of both houses.

20. In all matters and cases not specially provided for by this Chapter, or by any other statute of this Province, the Legislative Council of this Province and the committees and members thereof respectively, shall at any time hold, enjoy and exercise such and the like privileges, immunities and powers as shall be for the time being held, enjoyed and exercised by the Senate of the Dominion of Canada,

and by the respective committees and members thereof, CHAP. 3.  
and the House of Assembly and the committees and  
members thereof, respectively, shall, at any time, hold,  
enjoy and exercise such and the like privileges, immunities  
and powers as shall for the time being be held, enjoyed  
and exercised by the House of Commons of Canada, and  
by the respective committees and members thereof; and  
such privileges, immunities and powers, of both houses,  
shall be deemed to be and shall be part of the general and  
public law of Nova Scotia, and it shall not be necessary to  
plead the same, but the same shall in all courts of justice  
in this Province, and by and before all justices and others,  
be taken notice of judicially.

21. Upon any inquiry touching the privileges, immuni-  
ties or powers of either house, or of any of the committees  
or members thereof respectively, any copy of the journals  
of either of such houses printed or purporting to be printed  
by the order of the same, shall be admitted as *prima facie*  
evidence of such journals by all courts, justices and others,  
without any proof being given that such copy was so  
printed.

Journals c.  
House to be  
*prima facie*  
evidence, &c.

22. Any committee may require that facts, matter and  
things relating to the subject of inquiry before such  
committee be verified, or otherwise ascertained by the oral  
examination of witnesses, and may examine such witnesses  
upon oath; and for that purpose the chairman or any  
member of such committee may administer an oath in the  
form following or to the like effect, to any such witness:

“The evidence you shall give to the committee, touching  
(*stating here the matter then before the committee*), shall be  
the truth, the whole truth and nothing but the truth. So  
help you God.”

Committee may  
examine wit-  
nesses on oath.

Form of oath.

23. Where witnesses are not required to be orally  
examined before such committee, any oath, affirmation,  
declaration or affidavit in writing, which is required to be  
made or taken by or according to any rule or order of  
either house, or by direction of any such committee, and  
in respect to any matter or thing pending or proceeding  
before such committee, may be made and taken before any  
clerk of either house, any commissioner for taking affidavits  
in the Supreme Court or any notary public.

Affidavits, before  
whom taken.

24. Either house may at all times command and  
compel the attendance before such house or before any  
committee thereof, or before any joint committee of both  
houses, of such persons, and the production of such papers  
and things as such house or committee may deem necessary  
for any of its proceedings or deliberations. Any person  
neglecting or refusing to attend, or to produce such papers

Either House  
may compel  
attendance of  
witnesses, &c.

CHAP. 3. and things before such house or committee, shall be guilty of a violation of this Chapter.

Immunity for certain acts.

25. No person shall be liable in damages or otherwise for any act done under the authority of either house and within its legal power, or under or by virtue of any warrant issued under such authority; all such warrants may command the aid and assistance of all sheriffs, bailiffs, constables and others; and every refusal or failure to give such aid or assistance when required shall be an infringement of this Chapter.

Members not liable to action in certain cases.

26. No member of either house shall be liable to any civil action or prosecution, arrest, imprisonment or damages, by reason of any matter or thing brought by him by petition, bill, resolution, motion or otherwise, or said by him before such house; and the bringing of any such action or prosecution, the causing or effecting any such arrest or imprisonment and the awarding of any such damages, shall be deemed violations of this Chapter.

Members not liable to arrest during Session, &c.

27. Except for any breach of this Chapter, no member of either house shall be liable to arrest, detention or molestation for any debt or cause whatever of a civil nature, during any session of the legislature, or during the fifteen days preceding or the fifteen days following such session; and any such arrest, detention or molestation shall be an infringement of this Chapter.

Members exempted from serving on juries, &c.

28. During the periods mentioned in the next preceding section, all members, officers and *employés* of either house, and all witnesses summoned to attend before either house or any committee, shall be exempt from serving or attending as jurors before any court of justice in this Province.

Certain things to be deemed infringements of this Chapter.

29. The following acts, matters and things are prohibited, and shall be deemed infringements of this Chapter:

(1.) Insults to or assaults or libels upon members of either house during the session of the legislature.

(2.) Obstructing, threatening or attempting to force or intimidate members of either house.

(3.) The refusal or failure of any member or officer of either house, or other person, to obey any rule, order or resolution of such house.

(4.) The offering to or acceptance by any member of either house of a bribe to influence him in his proceedings as such, or the offering to or acceptance by any such member of any fee, compensation or reward for or in respect of the promotion of any bill, resolution matter or thing submitted to or intended to be submitted to either house or any committee.

(5.) Assaults upon or interference with officers of either house while in the execution of their duty.

(6.) Tampering with any witness in regard to evidence CHAP. 3.  
to be given by him before either house or any committee.

(7.) Presenting to either house or to any committee any forged or falsified document, with intent to deceive such house or committee.

(8.) Forging, falsifying or unlawfully altering any of the records of either house or of any committee, or any document, or petition presented or filed, or intended to be presented or filed before such house or committee, or the setting or subscribing by any person of the name of any other person to any such document or petition with intent to deceive.

30. Each house shall be a court of record, and shall have all the rights and privileges of a court of record for the purpose of summarily inquiring into and (after the lapse of twenty-four hours) punishing the acts, matters and things herein declared to be violations or infringements of this Chapter; and for the purposes of this Chapter each house is hereby declared to possess all such powers and jurisdiction as may be necessary for inquiring into, judging and pronouncing upon the commission or doing of any such acts, matters or things, and awarding and carrying into execution the punishment thereof provided for by this Chapter, and amongst other things each house shall have power to make such rules as may be deemed necessary or proper for its procedure as such court as aforesaid.

31. Every person who shall be guilty of an infringement or violation of this Chapter shall be liable therefor (in addition to any other penalty or punishment to which he may by law be subject) to an imprisonment for such time during the session of the legislature then being held, as may be determined by the house before whom such infringement or violation shall be inquired into. The nature of the offence shall be succinctly and clearly stated and set forth on the face of any warrant issued for a commitment under this section.

32. Either house may establish rules for its government and the attendance and conduct of its members, and alter, amend and repeal the same; and may punish members for disorderly conduct or breach of the rules of such house. The rules and orders of each house existing at the time this Chapter shall come into operation shall continue in force as far as applicable, until altered, amended or repealed. All rules of either house not inconsistent with this Chapter shall have the force and effect of law, until altered, amended or repealed by such house.

33. The determination of the proper house upon any proceeding under this chapter shall be final and conclusive.



## CHAP. 3.

34. In case of any civil proceeding or prosecution against any person for or on account or in respect of the publication of any copy or any report, paper, votes or proceedings of either house, the defendant at any stage of the proceedings may lay before the court or judge such report, paper, votes or proceedings, and such copy, with an affidavit verifying such report, paper, votes or proceedings, and the correctness of such copy; and the court or judge shall immediately stay such civil proceeding, and the same, and every writ or process issued therein, shall be and shall be deemed to be finally put an end to, determined and superseded by virtue of this Chapter.

Evidence under general issue in such proceeding.

35. It shall be lawful in any civil proceeding against any person for printing any extract from or abstract of any such report, paper, votes or proceedings, to give in evidence (under the general issue or denial) such report, paper, votes or proceedings, and to show that such extract or abstract was published *bona fide*, and without malice; and if such shall be the opinion of the court, or of the jury, as the case may be, judgment shall be rendered or a verdict shall be entered for the defendant.

Printed copy of Journals to be *prima facie* evidence.

36. In any such proceeding any copy of the journals of either house, printed or purporting to be printed by order of the same, shall be admitted as *prima facie* evidence of such journals by all courts, justices and others, without any proof being given that such copies were so printed.

Members not to receive compensation for promoting bills, &c.

37. No member of either house shall accept or receive, either directly or indirectly, any fee, compensation or reward, for or in respect of the promoting of any bill, resolution, matter or thing submitted or intended to be submitted to the consideration of either house or of any committee.

Attorney, &c., being partner of member not to receive such compensation.

38. No barrister, solicitor or attorney, who in the practice of his profession is a partner of any member of either house, shall accept or receive, either directly or indirectly, any fee, compensation or reward as aforesaid.

Penalties.

39. Any person violating the provisions of the two preceding sections of this Chapter shall be subject to a penalty of three hundred dollars, over and above the amount or value of the fee, compensation or reward accepted or received by him, to be recovered by any one who will sue therefor, one half thereof to be paid to the person so suing, and the other half to the Provincial Treasurer for the public uses of this Province: Provided however that if the person so suing either shall have been a party to or otherwise implicated in such violation of this Chapter, or shall become a witness at the trial of the

Proviso.

suit for such penalty, the whole amount recovered shall be paid to the Provincial Treasurer for the uses aforesaid. CHAP. 4.

40. Nothing in this Chapter shall be construed to contravene or conflict with any Legislation (*intra vires*) of the Parliament of Canada, or with any enactment of the Imperial Parliament in force in this Province. Not to conflict with Canadian or Imperial Parliament.

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## CHAPTER 4.

### OF THE ELECTION OF MEMBERS OF THE HOUSE OF ASSEMBLY.

#### REGISTER OF VOTERS.

1. The Municipal Council in every municipality, the City Council in the City of Halifax, and the Town Council in every incorporated town, shall have power from time to time to divide the county, district, city or town over which they have jurisdiction, into so many sections, to be called revisal sections, as they shall deem fit, including in each section not less than two, nor more than five polling districts, and every such municipal and town council shall for each revisal section annually appoint three persons as revisors, who shall be duly sworn to the impartial performance of their duty in the form prescribed in schedule A. to this chapter. In the City of Halifax any three or more of the Aldermen, to be appointed in each year as the other city officers are appointed, shall annually revise the list of electors within the city qualified to vote at elections for the Assembly in the manner and at the times in this Chapter prescribed, and such persons shall before entering on their duties be sworn to the impartial performance thereof in the form prescribed in schedule A. Municipal Council, &c., have power to divide the county, &c., into revisal sections and appoint revisors.

2. Unless and until otherwise arranged under the authority of this Chapter, the revisal sections throughout the Province shall remain as now established, save that each incorporated town shall constitute a revisal section, and the City of Halifax shall constitute a single revisal section as heretofore. Provisions as to City of Halifax.

3. The sheriff of each county in the province shall ascertain the number of or probable number of persons qualified to vote in each district where voters are so entitled to vote; and if such district comprises more than three hundred voters, he shall sub-divide the said district into polling divisions in a convenient manner, so that there shall be at least one polling division for every two hundred Revisal sections remain as now established except in certain cases.

Sheriff shall ascertain number of voters and sub-divide district into polling divisions, fix polling stations, and grant additional polling places.

CHAP. 4. voters; and he shall also fix a polling station in a central and convenient place in each polling division; and the sheriff may in his discretion grant such additional polling places in such polling division as the extent of the division and the remoteness of any body of its voters from the polling place may render necessary, although the voters thereof may be less than the number above specified.

Sheriff shall furnish boundaries and number of polling divisions to Clerk of Municipality and furnish the same to assessors. 4. The sheriff of each county shall furnish the clerk of the municipality with the boundaries and number of each polling division, so made or sub-divided by him. And the clerk of the municipality shall furnish the assessors of each polling district so sub-divided with the boundaries or description of such polling division, as received from the sheriff.

Sheriff may include parts of polling districts. 5. The sheriff, in dividing polling districts, may, if he deems it expedient or more convenient for voters, include in any division parts of one or more polling districts.

Divisions not to affect districts at present established except, &c. 6. The divisions of polling districts, so made are not to interfere with or affect the polling districts as at present established by law, except as herein provided.

Clerk of City of Halifax discharges duties for City. 7. In the City of Halifax the City Clerk shall discharge the duties required to be performed under this Chapter by the Clerk of the Municipality of Halifax, so far as the city is concerned.

Divisions by Sheriff co-terminus with sub-divisions for elections for House of Commons, of Canada. 8. The divisions of districts to be made by the sheriff under the provisions of this Chapter shall be co-terminus with the sub-divisions (if made) of the electoral districts sub-divided by the returning officers for elections for the House of Commons of Canada.

Lists to be made and given to revisors. 9. The assessors of each assessment district shall, on or before the twentieth of January in each year, deliver to the revisors a copy of the assessment roll for the polling districts within the revisal section; and if for any cause any part of the inhabitants therein are exempt from taxation, the assessors shall either include their names in the same or make a separate list of such parties, so that the list shall contain the names of all persons possessed of real or personal estate, in the form following, and deliver it to the revisors;—

*Assessment Roll for Polling District No. —.*

Name.	Real Estate of residents within County.	Personal Estate of residents within County.	Real estate of non-residents.	Personal estate of non-residents.
A. B. . . . .	\$100 00	\$ 0 00	\$ 0 00	\$ 0 00
C. D. . . . .	0 00	100 00	0 00	0 00
E. F. . . . .	0 00	0 00	25 00	0 00

The assessors shall mark on the assessment roll opposite each name the number of the polling division in which the elector is entitled to vote. CHAP. 4.

10. The revisors shall, before the first day of March in each year, select and prepare from the assessment roll alphabetical lists of the qualified electors of each polling division in the revisal sections, distinguishing the residents within the county from the non-residents, and affixing the place of the non-residents when known; and shall, on or before the said first day of March in each year, post up a copy of the said list in three of the most public places in each polling district, with the following notice:—

Lists to be prepared and posted

“The revisors will meet at ———, on the second (*if* Notice therewith *Sunday the third*) day of April next, at eleven o’clock, A. M., to revise the list of electors for each of the polling districts numbers ——— within the revisal section number ———; and any person claiming to add to or strike off a name from the list must give notice thereof in writing, with the cause of objection, to either of us, on or before the fifteenth day of March next, and also notify every person proposed to be struck off.

Dated the — day of ———, A. D., 18—.

A. B. }  
C. D. } *Revisors.*  
E. F. }

11. The revisors shall, on or before the twentieth day of March in each year, post up in three of the most public places of each polling district, an alphabetical list of the persons proposed to be added to or struck off respectively in each polling district, with a notice appended to each list to the effect following:—

List of voters added or struck off to be posted.

“The revisors will, on the second (*if* *Sunday the third*) day of April next, at ———, in the revisal section number ———, adjudicate upon the propriety of adding (*or striking off, as the case may be*) the foregoing name to (*or from*) the list of qualified voters in district number ———. Notice therewith

Dated the — day of ———, A. D., 18—.

A. B. }  
C. D. } *Revisors.*  
E. F. }

12. The person who proposes to strike a name from the list shall, on or before the fifteenth day of March, give notice in writing to the party objected to, either personally or by leaving it at his last or usual place of abode, and shall prove on oath the giving the notice to the satisfaction of the revisors, before they hear the objection. Notice to party objected to, &c.

## CHAP. 4.

Meetings of re-  
visors, proceed-  
ings at, &c.

13. At the time and place appointed the revisors shall attend and correct the list, and shall with all convenient despatch make out for each polling division an alphabetical list of the electors thereof resident within the county, and of the non-resident electors, stating residence when known; and on or before the twentieth day of April in each year transmit the same to the clerk of the municipality. They shall add to or strike from the list the name of any person whose qualification or disqualification is satisfactorily proved to have existed at the date of the last assessment, provided notice of the claim has been given to a revisor on or before the fifteenth day of March; and in case of disqualification, provided it be proved to the satisfaction of the revisors that notice in writing has been given to the party objected to within the same period.

Alphabetical list  
of electors, what  
included in.

14. The alphabetical list of electors so to be made out for each polling division, shall include the name of every person who shall appear by the said assessment rolls to have been assessed in respect of real estate to the value of one hundred and fifty dollars, or, in respect of personal estate, or of personal and real estate together, to the value of three hundred dollars; and shall also include the names included by the assessors or appearing on the separate list furnished pursuant to section nine of this Chapter, of persons exempt from taxation, provided such persons appear from said return to be possessed of real estate to the value of one hundred and fifty dollars, or of personal estate or personal and real estate together to the value of three hundred dollars. For the purposes of this section, the occupant of real estate, if a yearly tenant, shall be deemed to be in possession thereof; and if such real estate be of the value of one hundred and fifty dollars, or if such real estate, together with personal property in possession of such occupant, be of the value of three hundred dollars, such occupant shall, if not otherwise disqualified, be entitled to have his name placed on the list of electors, although he shall not have been assessed.

Yearly tenants.

Firms.

Bodies corporate

15. When a firm is assessed in respect of property sufficient to give each member a qualification, the names of the several persons comprising such firm shall be inserted in the list; but if the property be held by a body corporate, no one of the members thereof shall be entitled to vote, or be entered on the list of voters, in respect of said property.

Paupers to be  
struck out.

16. The revisors, when correcting the list, shall strike therefrom the name of any person who, within the twelve calendar months then next preceding, shall have received aid as a pauper under any poor law of this Province, or aid as a poor person from any public grant of government money.

17. If the assessors neglect to make up and deliver the lists, or wilfully deliver an incorrect list, or if the revisors neglect to revise the list so delivered, or wilfully transmit an incorrect list, for every neglect or wilful delivery or transmission of an incorrect list every assessor, or revisor so contravening this Chapter shall pay a penalty of one hundred dollars, to be recovered in the Supreme or County Court by any person who will sue therefor, and each day a list is delayed shall be a separate offence.

CHAP. 4.

Penalty for neglect of assessor.

18. The sheriff of the county shall, on or before the twenty-fourth day of April in each year, attend at the office of the clerk of the municipality, to ascertain the non-resident electors who may be qualified to vote in more than one polling district, and the clerk shall under his direction make a copy of the list of each polling district, with the name of any non-resident elector marked as such who may have selected that polling district. He shall make an alphabetical list of the remaining non-resident electors. When a non-resident elector shall, before the said twenty-fourth day of April, have notified the sheriff in writing of his selection of a particular polling district, his name shall be inserted and entered on the list of that polling district until he become disqualified or direct otherwise. In case no such notification has been made, the names of such non-resident electors shall be added to the list for any polling division in any one of the polling districts in which their qualification exists.

List of non-resident electors.

19. The lists shall be made up, signed by the sheriff, and deposited with the clerk of the municipality on or before the fourth day of May in each year, and shall thenceforth be the register of electors for the county.

Lists to be signed by Sheriff and deposited with Clerk of Municipality.

20. If from any cause the register of electors for any polling district is not made up in any year, the register last made up shall be used in its stead for the purpose of election.

If register not made the register last made to be used.

21. The revisors shall have power to summon witnesses to attend at the time and place appointed, to give evidence as to the qualification or disqualification of any person, and to administer an oath and examine the parties; and such witnesses on oath, and any person so summoned, who shall neglect to attend without good cause shewn therefor to the revisors, or attending shall refuse to be sworn or give evidence, shall upon summary conviction thereof before a justice of the peace, be liable to a penalty of twenty dollars; and every witness attending shall be entitled to receive the same fees and travelling charges as witnesses attending before justices of the peace in civil

Revisors may summon witnesses, &amp;c.

Penalty.

Fees.

CHAP. 4. suits, to be paid by the person at whose instance the respective witnesses may be summoned.

Register for City of Halifax, how made up, revised, &c.

22. The list of electors for the City of Halifax shall be revised and corrected by the Aldermen, as above prescribed; and the City Council may regulate the same by by-laws not inconsistent with this Chapter; and when the list is corrected, and an alphabetical list of every ward or polling division is made up, it shall be signed by the Mayor and filed with the Clerk of the Municipality of the County of Halifax, and shall be the register of electors for the said city.

Register for incorporated towns, how made up, revised, &c.

23. The list of electors for every incorporated town shall be revised and corrected by the revisors appointed by the respective Town Councils as hereinbefore prescribed, and the respective Town Councils may regulate the same by by-laws not inconsistent with this Chapter; and when the lists are corrected and an alphabetical list of every ward or polling division is made up, it shall be signed by the Warden or Mayor, as the case may be, and filed with the clerk of the municipality within the territorial limits of which such incorporated town is situate, and shall be the register of electors for the said incorporated town.

Expenses of preparing register, how paid.

24. The reasonable charges of the sheriff and expenses incurred in preparing the register of electors, shall be a county charge, provided that no charge shall be made against the county for any services or duties performed by any officer of the city or of any incorporated town under or by virtue of this Chapter.

Sheriff to furnish presiding officer with copy of register.

25. The sheriff shall at every election furnish the presiding officer of each polling division with a true copy of the register of electors of the polling division for which he is appointed.

#### SHERIFF'S COURT.—NOMINATION OF CANDIDATE.

Form of writs for election, length of notice, &c.

26. When a new assembly shall be summoned, or more than one vacancy occur at or about the same time, the writs shall be so transmitted that the same may be received by the respective sheriffs as nearly as may be at the same time. There shall be at least forty days between the teste and return of writs. The writs shall in the body thereof express the day when the sheriff shall hold his court for the commencement of the election, allowance being made for enabling him to give at least ten days' notice of the election throughout the county; and in cases of general elections, or where more than one writ shall be required to be issued at or about the same time, the day named for holding the sheriff's court for commencing the elections shall be the same in all the writs.

27. The sheriff shall, immediately on the receipt of a writ, endorse thereon the day of receipt, and shall forthwith cause notice in writing or by printed handbills to be posted in some of the most public places within every polling district in the County for which representatives are to be elected, which notices shall express the day when the sheriff will hold his court in the county court house, being the day named in the writ therefor; and also the time and place at which, in case a poll be demanded, the same will be taken, and the number of representatives to be elected, and for what places in particular under the writs then under the sheriff's hands, and the poll shall be taken in the week next following that within which the sheriff's court for opening the election shall be appointed to be held, and on the same day of the week as the day appointed for holding such court.

CHAP. 4.  
Proceedings of  
Sheriff on receipt  
of writ.

28. On the day appointed for holding the election, the sheriff, or his deputy, shall open his court at the county court house, between the hours of ten and twelve o'clock in the forenoon, and shall read his writs, and shall take the following oath, to be administered by a justice of the peace, or any two electors then present:

Sheriff's court,  
when to be held  
&c., oaths to be  
administered.

"I, A B, do swear that I have not received, and will not receive, any sum of money, office, or employment, or gratuity, or any bond, bill or note, or promise of gratuity whatsoever, either by myself, or another, to my use or advantage, for appointing any presiding officer to take the poll, or for appointing any poll clerk, or for making any return at this election; and that I will make such appointments impartially and according to law."

And the sheriff shall then administer to the clerk whom he shall have appointed to assist him in the election, an oath for the faithful and impartial discharge of his duty, and shall continue the court open until two of the clock in the afternoon of that day; and on the same day, and as soon after two of the clock as the duties remaining to be performed will permit, shall finally close the court, or adjourn the same to another day, as the case may require.

29. There shall be no public or political meeting held by the sheriff in connection with the election on the day provided for his court, commonly known as nomination day; but the sheriff shall attend within the court house, from eleven of the clock in the forenoon until two of the clock in the afternoon, or till such time thereafter as the duties remaining to be performed require; and he shall exclude from the place all persons not having business

No public or political meeting to be held by Sheriff on nomination day.



**CHAP. 4.** before him in connection with the election; and he shall preserve order and quiet.

Proceedings at  
Sheriff's court.

30. The sheriff shall at his court receive the names of the candidates proposed by two electors of the county previously to two o'clock; and their names shall be by the clerk, under the sheriff's direction, entered in the sheriff's record book, and no candidate's name shall be entered after two o'clock, and at that hour the sheriff shall proclaim the names of the candidates, subject to the provisions in the next following section contained; and in the case of each election, in respect of which previously to two o'clock no more candidates are proposed than are required to be returned, the election shall be forthwith determined, and the sheriff shall declare the candidates proposed, and who shall have qualified, if thereto required, duly elected members, and shall make return of the writ accordingly; and in cases of elections where opposing candidates shall be proposed, previously to two o'clock, who shall have qualified if required, as directed by this Chapter, and where a poll has been demanded, the sheriff shall then grant the poll, and make proclamation of the time and place at which the poll will be taken in the several polling districts, conformably with the notices before conditionally given, and then adjourn the court, as regards the elections in which a poll shall be demanded, to some day within five days next after the day for taking the poll, then to be held at the same place.

Two electors to  
propose name of  
candidate in  
writing.

Candidate need  
not be present.

Affidavit instead  
of oath and be-  
fore whom sworn

When not neces-  
sary to demand a  
poll.

Sum to be paid  
by candidate and  
Sheriff's receipt.

31. The names of the candidates proposed, each by two electors of the county, as provided by the section next preceding, shall be presented to the sheriff in writing. It shall not be necessary for any candidate to be himself present at the sheriff's court on such day of nomination; and, instead of the oath provided for by the section next preceding, an affidavit that the candidate is legally qualified to be elected a member of the House of Assembly, made by the candidate or his authorized agent, and sworn to before a judge or commissioner of the Supreme Court, a judge of a County Court or a justice of the peace, shall be sufficient. Provided, however, that any candidate may, if he shall prefer to do so, qualify himself in accordance with the provisions of the section next preceding. If no more candidates are proposed, or no more names received than the number of members required to be returned, it shall not be necessary to demand a poll, but it shall be ordered, and the proclamation made as provided by the section next preceding.

32. Each candidate shall pay, or cause to be paid, to the Sheriff at the time of nomination, and before the Sheriff

shall enter his name on the Poll book as a candidate, the CHAP. 4. sum of one hundred dollars, and the receipt of the sheriff, which he shall be bound to give under a penalty of one hundred dollars, shall in every case be sufficient evidence of the production of the nomination paper, of the consent of the candidate, and the payment herein mentioned.

The sum so deposited by any candidate shall be returned to him in the event of his being elected, or of his obtaining a number of votes at least equal to one half the number of votes polled in favor of the candidate elected having the smallest number of votes, otherwise it shall belong to Her Majesty for the uses of this Province. When such sum shall be returned

33. A person capable of being elected a member of the Assembly shall be a male British subject, of the age of twenty-one years and upwards, and any candidate at any election shall, if required, by any other candidates or any elector or the sheriff, make before the sheriff the following declaration : Qualification of candidate.

“I, A B, do declare and testify that I am a British subject of the age of twenty-one years and upwards.” Declaration.

34. If the qualification of a candidate when questioned shall not before the close or adjournment of the court be specified as in the preceding section directed, the candidate shall be incapable of being elected, nor shall his name be entered on the record book, or if entered the same shall be expunged at or before the close or adjournment of the court. If qualification not specified candidate disqualified.

The sheriff shall furnish to the Provincial Secretary an account of the actual expenses of the election, duly attested before a judge or commissioner of the Supreme Court of this Province. Sheriff to furnish attested account of election expenses.

35. No presiding officer shall receive, nor shall any poll clerk record, the name of a person as a candidate, nor shall any vote be received for him, unless his name shall have been entered as a candidate in the sheriff's record book at the court, and shall not have been expunged; and votes entered on a poll book contrary to this provision, shall in respect of such person be expunged, and not counted by the sheriff in casting up the votes. Votes for candidates not on Sheriff's books to be refused.

36. Any candidate proposed at such election may, at any time before one o'clock of nomination day, by writing under his hand, or publicly and openly in the sheriff's court, direct his name to be withdrawn. In which case the entry in the sheriff's record book shall be erased, and the sheriff shall immediately give public notice by proclamation, aloud, and thereupon such party shall not be considered as having been proposed as a candidate. If candidate withdraws.

## CHAP. 4.

## SHERIFF'S DUTIES ON DEMAND OF POLL.

Proceedings by  
Sheriff when  
poll is demanded

37. When a poll has been granted, the sheriff shall by precept under his hand appoint a presiding officer for taking the poll in each polling division, who shall be then resident within the county, and shall have been so for a year then next preceding, and shall thereby direct the presiding officer at the appointed time and place to take the poll within the division, and the sheriff shall also appoint a poll clerk for taking the votes under the direction of the presiding officer in each division, and shall prepare a poll book and enter therein the names of the candidates for whom votes are to be given within the division; and the names of the candidates, and the necessary information regarding them, shall before the opening of the poll be furnished by the sheriff to the presiding officers, and the sheriff shall prior to the polling, cause booths to be erected, or procure buildings at which the poll may be taken, and shall furnish each of the presiding officers with a copy of the list of electors for the polling division for which he is appointed, and shall before the opening of the poll deliver or cause to be delivered to every presiding officer at least ten copies of printed directions for the guidance of voters. Such printed directions may be in the form of Schedule B of this Chapter.

Sheriff may act  
as Presiding Officer.

The sheriff may act as presiding officer in a district or division without precept and without taking the presiding officer's oath.

Vote to be by  
ballot.

38. In case of a poll at an election of members to serve in the Legislative Assembly, the votes shall be given by ballot.

Ballot boxes,  
construction and  
control of.

39. The ballot boxes at such election shall be made of durable material, each box being provided with a lock and key, and a convenient aperture for depositing the ballots therein—and shall be so constructed as to secure the ballots deposited therein from loss or illegal interference; and such ballot boxes shall be under the control of the sheriff, who shall preserve them for use at elections.

Ballot boxes provided  
by Sheriff  
at expense of  
Government.

40. Any ballot boxes required for taking a poll shall be provided by the sheriff, who shall keep them in good repair; and any necessary expense that he may incur in providing or repairing such ballot boxes shall be defrayed by the Provincial Government.

Sheriff to provide  
each polling officer  
with ballot box,  
register of electors  
and polling book.

41. When it becomes necessary at such election to use the ballot boxes, it shall be the duty of the sheriff, at least twenty-four hours before the time by law appointed for opening the poll, to deliver one of such ballot boxes with the lock and key thereof to every presiding officer appointed for the purposes of the election; and the sheriff,

together with the ballot box shall also furnish the presiding officer of each polling district or division with a true copy of the register of electors of the district or division for which such officer is appointed, and with a poll-book, as now required by law. In any case where the sheriff shall fail to furnish a ballot box to the presiding officer in any polling district or division, it shall be the duty of such presiding officer to provide one, which may be used as if it had been provided by the sheriff.

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Presiding officer to provide ballot box in case Sheriff fails to do so.

42. Every polling place shall be furnished with compartments in which the voters can mark their votes screened from observation; and it shall be the duty of the sheriff to see that a sufficient number of such compartments are provided at each polling place.

Compartments for voters to be provided.

43. Where a poll shall have been granted, the sheriff shall forthwith cause to be printed such number of ballot papers, not less than the number of registered electors within his bailiwick, as shall be sufficient for the purposes of the election.

Sheriff to furnish ballot papers.

44. Such ballot papers shall each contain the names and description of each candidate, alphabetically arranged in the order of their surnames, or if there be two or more candidates with the same surnames in the order of their other names. The names and description of each candidate shall be set forth in the ballot paper as they have been set forth in the nomination paper, and the ballot paper shall be in the form Schedule C to this Chapter.

What ballot papers shall contain.

45. The sheriff, at least twenty-four hours before the time appointed by law for opening the poll, shall deliver or cause to be delivered to each presiding officer within his bailiwick a sufficient number of ballot papers which have been prepared for use in the polling division for which such presiding officer is appointed to act, and shall also furnish to the presiding officer the necessary materials for voters to mark the ballot papers, and such materials shall be kept in the polling place by the presiding officer for the convenient use of voters from the opening to the close of the poll, and the sheriff shall keep a correct record of the number of ballot papers he shall furnish to each presiding officer.

Sheriff shall furnish Presiding Officer with ballot papers and materials to mark them.

Sheriff shall keep record of ballot papers.

46. In any case where the list of electors for any polling district is subdivided, the sheriff shall within two days after nomination day cause to be posted up in at least three of the most public places in such polling district (not in the immediate vicinity of each other) notices, setting forth the locations of the several polling booths in such district and the names of the electors who are to vote at each of such booths respectively.

Sheriff to post locations of booths and names of electors.

## CHAP. 4.

## PROCEEDINGS AT POLLING PLACE.

**Time of opening and closing poll.** 47. When a poll shall have been granted, it shall be opened in the different districts or divisions at or near the polling place, at eight o'clock in the morning of the day appointed, and be kept open until five o'clock in the afternoon, when it shall finally close.

**Duties of Presiding Officer at opening of poll.** 48. The presiding officer shall at the opening of the poll read aloud his precept and declare the names of candidates, and shall at or before the opening of the poll, and before receiving a vote, take the following oath :

**Form of oath.** "I, A. B., do swear that I have not received any sum of money, office, employment or gratuity, or any bond, bill or note, or any promise of gratuity by myself, or another, to my use or advantage, for making any return at this election, and that I will faithfully discharge my duty at the election to the best of my knowledge and judgment, \* and that I will return to the sheriff a true and faithful account of the votes polled in this division, wherein I preside."

**Duties of poll clerk.** And the poll clerk shall, before or at the opening of the poll, take an oath in the same form down to the asterisk, with the addition of these words thereafter, "and I will faithfully record the names of all electors who shall vote in this polling division."

**Oath of Presiding Officer and poll clerk, by whom administered.** The sheriff, a justice of the peace, or in their absence any two electors, are authorized and required to administer the oaths.

**Inspector, &c., to be appointed by Presiding Officer when nominated** 49. The presiding officer shall appoint an inspector, an agent, and a clerk, when nominated by or on behalf of a candidate, and their names shall be immediately entered in the poll book, and a candidate's clerk shall take the following oath, to be administered by the presiding officer :

**Form of oath of candidate's clerk** "I, A. B., do swear that I will take this poll fairly and impartially by entering the names and places of abode of the electors, who shall vote in this polling division."

**Presiding Officer to placard printed directions.** 50. Every presiding officer shall before the opening of the poll, or immediately after he has received such printed directions from the sheriff, if he did not receive the same before the opening of the poll, cause such printed directions to be placarded outside the polling place for which he is appointed to act, and also in every compartment of the polling place.

**Presiding Officer to exhibit and lock ballot box before commencement of poll.** 51. The presiding officer shall immediately before the commencement of the poll shew the ballot box to such persons as are present in the polling place, so that he and they may see that it is empty; and he shall then lock the box, place it in his view for the receipt of ballots, and shall keep it so locked until the close of the poll. In case an elector shall come to the wrong booth to vote the presiding

officer shall immediately direct him to the proper one; and no presiding officer shall permit an elector to vote in any manner contrary to such instructions.

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Presiding officer to direct elector to right booth.

51. When any person claiming to be entitled to vote at such election presents himself at the polling place for the purpose of voting, he shall state his name, residence and addition, and the presiding officer shall proceed as follows:

Person voting to state his name, &c.; and proceedings of Presiding Officer.

(1.) He shall ascertain that the name of such person is entered or purports to be entered upon the copy of the register of electors for the polling division in which he is presiding, and shall mark such person's name thereon.

(2.) He shall record or cause to be recorded in the poll-book the name and residence of such person; but shall in no instance enter on the poll-book or elsewhere, the name or names, or anything to indicate the name or names, of the candidate or candidates for whom the elector votes.

(3.) If such person shall take any oath or affirmation required to be taken by this Chapter or any act in amendment thereof, the presiding officer shall enter or cause to be entered opposite such person's name in the poll-book the word "sworn," or "affirmed," according to the fact.

(4.) Where the vote is objected to by any candidate or his agent, the presiding officer shall enter the objection in the poll-book by writing opposite the name of the person whose vote is objected to, the words "objected to," recording at the same time by or on behalf of which candidate the objection has been made.

(5.) Where such person as aforesaid has been duly required to take the oath or affirmation, and refuses to take the same, the presiding officer shall enter or cause to be entered opposite the name of such person in the poll-book, the words "refused to be sworn," or "refused to affirm," according to the fact, and the vote of such person shall not be taken or received; and the presiding officer for having taken and received such vote shall incur a penalty of two hundred dollars.

(6.) When the name of the person so claiming to vote is found on the copy of the register of electors for the polling district and marked thereon, and when the proper entries respecting him have been made in the poll book in the manner prescribed, the presiding officer shall deliver one ballot paper to such person, unless such person has refused to take any oath or affirmation in the preceding sub-sections mentioned, when no ballot paper shall be delivered to him.

(7.) The presiding officer may, and upon request of the elector shall, either personally or through his poll

CHAP. 4. clerk, explain to the voter as concisely as possible the mode of voting; but he or his poll clerk shall not influence nor attempt to influence the elector to vote for any candidate at the election.

Polling not to be interrupted.

53. The presiding officer shall prevent unnecessary delay in polling, and no person shall be permitted to interrupt the polling by addressing the electors or otherwise.

Marking and depositing ballot paper.

54. Upon receiving from the presiding officer the ballot paper so prepared as aforesaid, the elector receiving the same shall forthwith proceed into one of the compartments provided for the purpose, and shall then and therein forthwith mark his ballot paper in the manner mentioned in the directions contained in Schedule B to this Chapter, by making a cross with a pencil on any part of the ballot paper within the division containing the name (or names) of the candidate or candidates for whom he intends to vote, and shall then fold the ballot paper so as to conceal the names of the candidates and the mark upon the face of such paper; and leaving the compartment shall without delay and without shewing the front to any one, or so displaying the ballot paper as to make known the candidate for or against whom he has voted, hand it to the presiding officer, who shall deposit such ballot paper in the ballot box, and the elector shall then forthwith leave the polling place.

It shall be the duty of the presiding officer to see that only one ballot paper is deposited in the ballot box by each voter.

No person besides elector to be allowed in the compartment.

55. While any voter is in any balloting compartment for the purpose of marking his ballot paper, no other person shall be allowed to enter the compartment, or to be in any position from which he can observe the mode in which the voter marks his ballot paper.

Any person leaving polling place without depositing his ballot paper shall forfeit right to vote at the election.

56. No person who has received a ballot paper from the presiding officer shall take the same out of the polling place; and any person having so received a ballot paper, or tendered ballot paper, who shall leave the polling place without first depositing the same in the ballot box in the manner described, shall thereby forfeit his right to vote at the election; and the presiding officer shall make an entry in the poll book in the column for remarks to the effect that such person received a ballot paper, but took the same out of the polling place, or returned the same declining to vote, as the case may be; and in the latter case the presiding officer shall immediately write the word "declined" upon such ballot paper, and shall preserve it, and return it to the sheriff.

57. In case of an application by any elector claiming to be entitled to vote, who is incapacitated by blindness or other physical cause from marking his ballot paper, or in case of any person claiming to be entitled to vote who makes a declaration that he is unable to read, the proceedings shall be as follows:—

CHAP. 4.  
Electors when blind or unable to read.

(1.) The presiding officer shall in the presence of the agents of the candidates, cause the vote of such person to be marked on his ballot paper in manner directed by such person, and shall cause such ballot paper to be placed in the ballot box.

(2.) The presiding officer shall state or cause to be stated by an entry opposite the name of such person in the poll book, that the vote of such person is marked in pursuance of this section, and the reason why it is so marked.

(3.) The declaration of inability to read may be made orally in the form mentioned in Schedule D to this Chapter, and shall be made by the person claiming to be entitled to vote at the time of voting, before the presiding officer.

58. If a person representing himself to be a particular elector named on the copy of the register of electors, applies for a ballot paper after another person has voted as such elector, the applicant shall upon taking the oath authorized by law to be administered to voters at the time of polling, be entitled to mark a ballot paper, but such ballot paper shall be given to the presiding officer, and shall be placed by him in an envelope, securely sealed, and upon which he shall endorse the words "tendered ballot," and the presiding officer shall deposit the envelope containing such ballot paper in the ballot box, and such ballot shall not be counted by the presiding officer; and the presiding officer shall enter such person's name in the poll book, and shall make an entry opposite such name, showing the circumstances of the case.

When any person applies for a ballot as an elector and another person has voted as such elector, he shall be allowed to mark a ballot paper, which the Sheriff shall preserve in an envelope.

59. A person claiming to be entitled to a vote, who has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used as a ballot paper, may on delivering to the presiding officer such ballot paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction of the presiding officer, obtain another ballot paper in the place of the ballot paper so delivered up, and the presiding officer shall write the word "cancelled" upon such ballot paper, and preserve it and return it to the sheriff.

On delivering up a ballot paper in certain cases.

60. During the holding of the poll no person shall be entitled or permitted to be present in any polling place other than the officers, candidates or agents authorized to attend at the polling place, and such voters as are for the

During the holding of the poll, no person to be present in the polling place except the officers.



CHAP. 4.  
Proviso.

time being actually engaged in voting. Provided that it shall be lawful for the presiding officer to have present or to summon to his assistance in such polling place, any police constable or peace officer for the purpose of maintaining order, or preserving the public peace, or of removing any person who may in the opinion of the presiding officer be obstructing the polling, or violating any of the provisions of this chapter.

Every officer, &c., to maintain secrecy of voting.

61. Every officer, clerk and agent in attendance at a polling place or in counting the votes shall maintain and assist in maintaining the secrecy of the voting at the polling place.

Not to interfere with voter.

(1.) No officer, clerk or agent, or other person, shall interfere with or attempt to interfere with a voter when marking his vote; nor attempt to obtain at the polling place information as to the candidate for whom any voter at such polling place is about to vote or has voted.

Not to communicate information

(2.) No officer, clerk, agent, or other person shall communicate at any time to any person any information obtained at a polling place as to the candidate for whom any voter at such polling place is about to vote or has voted, unless required to do so by a court of law.

Voter not to be induced to display ballot.

(3.) No person shall directly or indirectly induce any voter to display his ballot paper after he shall have marked the same so as to make known to any person the name of the candidate for or against whom he has marked his vote.

Penalty.

(4.) Every person who acts in contravention of this section shall be liable on summary conviction before a stipendiary magistrate, police magistrate, or any justice of the peace, to a fine not exceeding twenty dollars, and in default of payment to imprisonment in the common gaol for any term not exceeding three months.

Presiding officers, &c., sworn.

62. Presiding officers, poll clerks and agents shall before the opening of the poll take and subscribe an oath in the form Schedule E to this Chapter, which oath may be administered by the sheriff, presiding officer, or a justice of the peace.

When Presiding Officers may poll their votes.

63. Presiding officers, polling clerks, candidates' agents, inspectors and their clerks, may poll their votes in the polling district where they are acting, though they are not qualified to vote therein, if on the day of nomination their names are certified and entered as qualified by the sheriff on the poll book, and the sheriff shall strike such names out of the district in which they are qualified to vote. If the presiding officer vote, the poll clerk shall administer the necessary oath to him if required. Candidates may poll their votes in any polling district in the county, but shall if required take the usual oaths.

## QUALIFICATION OF VOTERS.—OBJECTIONS AND CHALLENGES.

## CHAP. 4.

64. No elector shall be permitted to vote in more than one polling district or division in this Province on the same day. Elector shall not vote in more than one polling district.

65. No elector having at any election a right to vote in the county in which at the teste of the writ he resided, shall be permitted to vote in any other county. County in which elector shall vote.

66. In any such election, non-resident electors having a qualification in more than one polling district, may at their option vote in either; and any such non-resident elector, before he shall be permitted to vote, shall if required by the Presiding Officer, candidate, or his agent, or an elector, take in addition to the oaths hereafter prescribed the oath following: Option of non-resident electors.

“I, A. B., do swear that at the teste of the writ for this election, I resided at \_\_\_\_\_, in polling district number \_\_\_\_\_, in the county of \_\_\_\_\_. That I am not qualified to vote in the said county, and I have not this day voted in any other polling district or polling division in this Province.” Form of oath of non-resident elector.

67. It shall not be lawful for any person to vote at any election for a member or members to represent the people in the general assembly of this Province, who at any time within fifteen days before the day of election, was an *employe*, or in the receipt of wages or emolument of any kind as such *employe*, in the Post Office, the Custom House, the Inland Revenue department, the Lighthouse service, on the Government railroads, in the Crown Land office, or the Local Public Works and Mines, but nothing in this section contained shall be construed to extend to any elector who may have contracted to furnish materials of any kind for the Government Railroads, or to perform any other specific contract in respect of the same, or to any person who may have been employed by the day temporarily to repair the railroads; or to any post master, post office keeper, way office keeper, or mail courier under the Post Office. Persons unqualified.

68. Every elector, before he shall be permitted to vote, shall if required by the presiding officer, candidate, or his agent, or an elector, take the oaths following, or either of them, to be administered to him by the presiding officer, that is to say:— Elector to take oath if required by Presiding Officer, &c.

## OATH NUMBER ONE.

“I, A. B., do swear that I am qualified to vote at this election, that I am of the full age of twenty-one years, and am a British subject, that I reside at \_\_\_\_\_, that I am the person named in the register as” (here recite the name as written or spelt in the register) “as I verily believe, and that I have not before given my vote at this election. So help me God.”

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## OATH NUMBER TWO.

“I, A. B., do swear that I have not received, by myself or another, or any person in trust for me, or to my use, directly or indirectly, any sum of money, office, place, or employment, or gift, reward, or any promise, or security for any money, office, or employment or gift, in order to give my vote at this election. So help me God.”

## OATH NUMBER THREE.

“I, A. B., do swear that I have not within twelve calendar months next before this day, received aid as a pauper under any poor law of this Province, or aid as a poor person from any public grant of government money. So help me God.”

## OATH NUMBER FOUR.

“I, A. B., do swear that I was not at any one time within fifteen days before this election in the receipt of wages or emolument of any kind as an employee in the Post Office, (except as post master, or post office keeper, or way office keeper, or mail courier,) the Custom House, the Inland Revenue department, the Lighthouse service, on the Government railroads, the Crown Land office, or the Local Public Works and Mines, and that I have not resigned my employment in any of the said services, nor been discharged therefrom, in order to enable me to vote at this election. So help me God.”

Name of elector to be struck out of poll book on refusal to take oath.

69. The name of any elector who refuses or fails to take any of the aforesaid oaths, when thereunto required, shall be struck out of the poll book, and such elector shall not be again admitted to the booth or permitted to poll his vote.

Quakers may affirm.

70. Quakers may affirm in any case in which an oath is required.

## PROCEEDINGS AT CLOSE OF POLL.

Duties of Presiding Officer at close of poll.

71. At the close of the poll the presiding officer, with the assistance of the poll clerk, and in the presence of the candidates and their agents, or such of them as may then be present, shall examine the ballot papers and proceed to count the votes as follows:—

(1.) Any ballot paper on which votes are given to more candidates than are to be elected, or on which anything is written or marked by which the voter can be identified, or which is unmarked, or from which it is uncertain for which candidate the elector votes, shall be void and shall not be counted.

(2.) The presiding officer shall endorse "rejected" on CHAP. 4. any ballot paper which he may reject as void.

(3.) The presiding officer shall then count up the votes given for each candidate upon the ballot papers not rejected.

72. At the conclusion of the counting, the presiding officer shall declare the state of the poll in his polling district or division, and shall return all the ballot papers to the ballot box, and the poll clerk shall close the ballot box, with all the ballots therein, and lock and seal and secure it, so as to prevent as far as practicable ballots from being illegally deposited therein or abstracted therefrom.

73. After the ballots are counted, the presiding officer shall make up a written statement in the poll book of the number of votes given for each candidate in the polling district or division, and of the number of ballot papers rejected and not counted by him, which shall be made under the several heads.

(a.) Number of votes for each candidate.

(b.) Number of ballot papers rejected as voting for more candidates than are to be elected.

(c.) Number of ballot papers rejected for having a writing or mark by which the voter could be identified.

(d.) Number of ballot papers rejected as unmarked, or void for uncertainty.

(e.) Number of tendered ballot papers deposited.

74. The presiding officer, after the close of the poll and before making return to his precept, shall subscribe in the poll book the following oath, to be administered by a justice of the peace, or two electors of the polling district :

"I, A. B., presiding officer for the polling district \_\_\_\_\_, in the county of \_\_\_\_\_, do swear that the poll clerk was duly sworn, and that to the best of my belief this poll book was truly and correctly taken under my direction, and contains a true and correct statement of the votes taken at the poll for this district held in pursuance of the sheriff's precept, to me directed, and dated the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_."

75. Upon the completion of such written statement or return it shall forthwith be signed by the presiding officer and the poll clerk, and the poll clerk shall thereupon seal up the poll book, having first enclosed the key of the ballot box therein, and shall deliver the same so enclosed and sealed to the presiding officer, who shall give him a receipt therefor. The presiding officer shall forthwith transmit the ballot box with the ballot papers therein, so locked, sealed and secured, as hereinbefore provided, as well as the

CHAP. 4. poll book with the return and key, sealed as aforesaid, to the sheriff, who shall receive and safely keep them unopened until the re-assembling of his court at the court house on the day to which it had been adjourned.

Ballot box, &c.,  
to be personally  
delivered to  
Sheriff.

76. The presiding officer shall personally deliver the ballot box, containing the ballots, as well as the poll book, so sealed as aforesaid, to the sheriff personally, and if he be unable to do so, owing to illness or other cause, he shall do so by some trustworthy person selected for the purpose, and shall write on the outside of each package the name of the person by him selected for such purpose.

Statement to  
be returned to  
Sheriff by Pre-  
siding Officer.

77. The presiding officer, after the close of the poll and counting the votes, shall return to the sheriff a statement shewing :

- (a.) The number of ballot papers used and in the ballot box.
- (b.) The number of rejected ballot papers.
- (c.) The number of spoiled ballot papers.
- (d.) The tendered ballot papers.
- (e.) The number of unused ballot papers.
- (f.) The number of ballot papers, if any, taken from the polling place.

Ballot papers not  
used to be re-  
turned to Sheriff.

78. The presiding officer shall return, with the ballot box and poll book, to the sheriff all the ballot papers that have not been used or have been spoiled, in a sealed package.

RETURN DAY.—RECOUNT.—DECLARATION.

Sheriff to ad-  
journ court in  
certain cases.

79. If on the day to which the court has been adjourned all the returns shall not have been made by the presiding officer, the sheriff shall not open the poll books, and shall adjourn the court to the following day, and so from day to day until all the returns are made, and shall publicly state the cause or causes of such adjournment, but in no case shall he adjourn the court to so late a day as to interfere with the return of the election writ.

Sheriff to declare  
state of the poll.

80. The sheriff shall keep the poll books unopened until the re-assembling of his court on the day to which the same shall have been adjourned ; and then he shall openly break the seals thereon, and cast up the votes as they appear on the poll books, and shall then openly declare the state of the poll ; and if within one hour thereafter

Scrutiny may be  
demanded.

any candidate or two electors demand a scrutiny of the qualification of any candidate previously qualified and about to be returned, or protest against the whole election or return of any member, on grounds to be stated in writing, the sheriff shall enter the same on the record book, and annex a copy thereof to his return, with the writ ; and

such candidate or two electors may by writing signify to the sheriff at any time before the next meeting of the Legislature the abandonment of the protest or scrutiny. CHAP. 4.

Scrutiny may be abandoned.

81. On the final day to which the court shall have been adjourned, the sheriff shall publicly break the seals of the poll books, ascertain and declare the state of the poll, and return the members chosen for the county for which such election is held. Sheriff to declare state of poll and return members chosen.

82. If on such day any candidate shall request it the ballots shall be counted by the sheriff, assisted by two efficient clerks, appointed by him and sworn by him to the faithful discharge of their duty; each ballot shall be entered in the general poll book, and a similar entry in a check book, both prepared with proper columns, and with the candidates' names entered therein. Any candidate may require Sheriff to count ballots, and duties of Sheriff thereon.

(a.) Before another box shall be opened the result of the preceding one shall be ascertained.

(b.) If in counting up the two books the numbers differ, the counting shall be tested by referring to the ballots.

(c.) After the result is correctly ascertained the ballots shall be returned to the respective boxes from which they had been taken, and kept locked up until the members elected are declared, when the sheriff shall destroy them, unless a protest be entered against the election, in which case he shall preserve them until such protest is finally determined or abandoned.

(d.) If it takes more than one day to count the ballots, the sheriff shall at or before four o'clock in the afternoon adjourn the court from day to day until they are all counted.

(e.) As soon as the result of the counting is ascertained, the sheriff shall make proclamation of the members elected, and that the court is adjourned without day, and shall forthwith return the writ to the Provincial Secretary, and file the poll books and check lists with the clerk of the municipality within which is situated the shire town of the county in which the election has been held.

83. When on the final addition of votes by the sheriff an equality of votes is found to exist between any number of the candidates beyond the number of members to be elected for the county at the election, and the addition of a vote would entitle any of such candidates to be declared elected, the sheriff shall give such additional or casting vote for as many of the candidates between whom such equality of votes exists as shall be required to be returned for such county at such election; but shall in no other case have the right to vote. When Sheriff shall give casting vote.

## CHAP. 4.

## OFFENCES AND PENALTIES.

Sheriff guilty of misconduct shall forfeit his office. 84. Any sheriff guilty of wilful or corrupt misconduct in the conducting of an election shall forfeit his office, and shall not be eligible for reappointment.

Penalty for false return. 85. Any sheriff who shall make a false return, or return more than are required by the writ to be chosen, shall forfeit for every offence the sum of four hundred dollars; and the party aggrieved may also recover the damages he shall sustain thereby, with costs, in an action against him or any person who shall knowingly procure the same.

Penalty for refusal to administer oath. 86. Every sheriff or presiding officer who shall on request neglect or refuse to administer any or either of the oaths required to be taken by any elector, shall for every offence forfeit the sum of two hundred dollars.

Penalty for neglect to furnish ballot box, register or poll book. 87. If the sheriff shall fail to furnish ballot-boxes, or true copies of the register of electors or poll-books in the manner required by this Chapter, he shall incur a penalty of two hundred dollars in respect of every ballot-box or copy of the register of electors or poll book which he has failed to furnish in the manner prescribed.

Penalty in case Presiding Officer permitting polling to be protracted. 88. If a presiding officer shall allow any person to interfere or put questions to voters by which time is taken up, or shall put questions other than in this Chapter specified contrary to the wish of any candidate or his agent, or shall wilfully protract or permit to be protracted the polling, or shall otherwise offend in the premises, he shall forfeit forty dollars for every offence.

Penalty of Presiding Officer for neglecting to return poll book. 89. If a presiding officer shall not, before the opening of the sheriff's court on the day to which the same was adjourned, return the poll book or his precept to the sheriff or shall alter the poll book, he shall be liable to an action for damages at the suit of any party aggrieved, and shall also forfeit for every offence two hundred dollars, and the further sum of twenty dollars for every day's neglect to return the poll book.

May be committed in case of delay. 90. The sheriff or a candidate or an elector may make complaint thereof on oath to a justice of the peace of the county, who shall summon him forthwith to answer the same, and if he shall not shew good cause for the delay the justice may commit him to gaol until he duly make such return.

Penalty for offences where no specific penalty is provided. 91. If any sheriff, presiding officer, poll clerk, assessor, revisor, clerk of the municipality, or other person whatsoever, appointed or acting under the authority of this Chapter, shall wilfully contravene or disobey any of the provisions of this Chapter with respect to any matter or thing such person is required to do, and for which default

or offence no specific penalty is provided, he shall be liable CHAP. 4. to the penalty of one hundred dollars, to be recovered in an action at the suit of a candidate or elector; and the jury may find their verdict for the full sum of one hundred dollars, or any sum not less than twenty dollars they think just for the offence, and the plaintiff shall have judgment and execution therefor with costs of suit.

92. A candidate against whom a vote shall be wrongfully polled, or against whom, or to the prejudice, or with the intent to prejudice whose interest, any act shall be wrongfully done, contrary to this Chapter, and for which vote or act a forfeiture is herein imposed, may within six months from the commission of the offence, prosecute for the forfeiture, and, upon recovery, the amount, after deducting charges incurred by the candidate about the prosecution, shall be paid to the overseers of poor for the place where the offence was committed, for the use of the poor thereof. If no prosecution shall be pending, or have been prosecuted to final judgment, then any person may prosecute for the penalty at any time after the expiration of the six months, and before the expiration of twelve months from the commission of the offence. Candidate may prosecute within six months.

93. If any person shall fraudulently vote at any election by personating any elector, or being qualified shall vote or offer to vote more than once at any election, for every such offence the person shall forfeit the sum of forty dollars, and it shall be the duty of the sheriff to prosecute therefor. When any other person may prosecute.

94. No person shall Penalty for fraudulently voting.

(a.) Forge or counterfeit or fraudently alter, deface or fraudulently destroy any ballot paper, or Certain offences and penalties.

(b.) Without due authority supply any ballot paper to any person, or

(c.) Fraudulently take out of the polling place any ballot paper, or

(d.) Fraudulently put into any ballot box any paper other than the ballot paper which he is by law authorized to put in, or

(e.) Without due authority destroy, take, open, or otherwise interfere with, any ballot box or packet of ballot papers then in use for the purposes of the election.

(1.) No person shall attempt to commit any offence specified in this section.

(2.) Any person guilty of any violation of this section shall be liable, if he be a sheriff, presiding officer, or poll clerk, to imprisonment for any term not exceeding two years, with or without hard labor; and if he be any other



CHAP. 4. person, to imprisonment for any term not exceeding six months, with or without hard labor.

95. Any person who, being disqualified under the provisions of section 67 of this Chapter, shall vote or attempt to vote for any candidate or candidates at an election as aforesaid, shall be liable to a penalty of not less than twenty nor more than two hundred dollars; and if the penalty shall not be paid within one month after judgment and execution issued thereon, the defendant shall be imprisoned in the common jail for a term not exceeding three months.

Penalty for false oath, &c., or subornation. 96. Whoever shall wilfully, falsely and corruptly make any declaration, oath, or affirmation required by this Chapter, or shall corruptly procure or suborn any other person to make any of them, shall be guilty of perjury, and for every offence incur the penalty of a person guilty of perjury

Time for prosecution for penalty. 97. Penalties imposed by this Chapter must be prosecuted within four months after the commission of the offence, and may be recovered by action in any court of competent jurisdiction; and the plaintiff may set forth in his declaration that the defendant is indebted to him in the amount of the penalty sought to be recovered, allege the particular offence for which the action is brought, and that the defendant hath therein acted contrary to this Chapter, without mentioning the writ for holding the election or the return thereof.

Appropriation of penalty. 98. The penalty when recovered shall be appropriated one-half to the person who shall sue therefor, and the other half to the treasurer of the municipality, city or town where the offence was committed, for the use of the county, district or city.

Parol proof of election sufficient. 99. On trial of any action or prosecution for any penalty imposed by this Chapter, or any other proceedings arising out of any election, parol proof of the election shall be sufficient *prima facie* evidence, without producing the writ.

#### MISCELLANEOUS PROVISIONS.

Official seal of Sheriff. 100. It shall be the duty of the Governor-in-Council to furnish the sheriff of every county in the Province with an official seal, to be used for stamping ballot papers, and for other purposes connected with his office.

Death, &c., of Presiding Officer. 101. If a presiding officer before the termination of a poll shall die, or be incapable of performing or shall not perform his duty, the poll clerk shall act in his stead and perform his duties; but before commencing his new duties he shall appoint a poll clerk, who shall, with the new presiding officer, previously to entering upon their duties, take the oath prescribed for presiding officers and poll

clerk, and they shall have the same powers and be liable to the same penalties in their new capacities as if originally appointed. CHAP. 4.

102. If a poll clerk shall before the termination of a poll die, or be incapable of performing or shall not perform his duty, the presiding officer shall appoint another poll clerk to act in his stead; and the new poll clerk, before entering on his duties shall take in manner as if originally appointed the oath prescribed; and he shall have the same powers, and be liable to the same penalties, as if originally appointed poll clerk. Death, &c., of  
Poll Clerk.

103. On the return of a writ the sheriff shall be entitled to receive from the Provincial Treasury twenty dollars for every member returned. Sheriff's fee on  
return of mem-  
ber.

104. The reasonable expenses incurred by sheriffs for printing and for counting ballots, when a second count is demanded, shall be defrayed out of the provincial revenue. Sheriff's fees on  
second count.

105. The sheriff at his courts and the presiding officers at their polling places shall be during the day on which the election or polling may be prosecuted conservators of the peace, and vested with the same powers for the preservation of the peace, and the apprehension and committal for trial or holding to bail or trying and convicting violators of the law and good order as are vested in justices of the peace, and for the purpose of preserving peace and good order at the election or polling the sheriff or presiding officer may require the assistance of all persons present and may on view commit any person for breach of the peace, violating or threatening electors at or coming to or returning from the election or polling, or for any violation of good order, to the custody of any person for any time not exceeding twelve hours, or may by writing under his hand commit to prison for a like offence for a period not extending beyond the second day thereafter, and at the expiration thereof may cause the offender to be brought before a justice of the peace, who shall enquire into the matter and may on summary conviction fine the offender in a sum not exceeding eight dollars and costs, and commit him to jail until the fine be paid; and all persons present are enjoined to assist the officer presiding and justices in discharging such duties under pain of being guilty of misdemeanor; and justices residing in the district upon being notified in writing by the sheriff or presiding officer, shall attend to aid in preserving peace and order; and the justices, sheriff and presiding officer may when considered necessary swear in special constables to act as peace officers and assist in maintaining peace and order; and upon the written application of a candidate or agent or two electors, Sheriffs and pro-  
siding officers  
shall be conser-  
vators of the  
peace.

CHAP. 4. the sheriff or presiding officer shall swear in such special constables as may be requisite.

Election not invalidated by mistake, &c.

106. No election shall be declared invalid by reason of a non-compliance with the rules contained in this Chapter as to the taking of the poll, or the counting of the votes, or by reason of any mistake in the use of forms, if it appear to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in this Chapter, and that such non-compliance or mistake did not affect the result of the election.

Voter not required to state for whom he has voted.

107. No person who has *legally* voted at an election shall in any legal proceeding to question the election or return be required to state for whom he has voted.

Candidate to have one representative. Meaning of terms.

108. No candidate shall be entitled to have more than one representative at a polling place.

109. The word "sheriff" herein, shall mean sheriff, under-sheriff, or deputy sheriff; "presiding officer" shall mean the person presiding to take the poll; "county," in cases where a county is divided into two districts for municipal purposes shall mean such municipal districts; "clerk of the municipality" shall include the City Clerk, Halifax; "district" shall mean polling district, or where the context obviously requires such meaning may be read as polling division, and "election" the election of members to serve in General Assembly when the same requires such construction.

#### SCHEDULES.

##### A.

We, the undersigned revisors, duly appointed for revision section ———, number ———, in the county of ———, do hereby solemnly swear that we will well and faithfully discharge the duties assigned to us without favor or partiality, that we will place no name on the list of registry, and will strike no name off the same unless we shall be satisfied that the same by the law under which we have been appointed as revisors should be placed on or struck off the same, and that we will in all respects conform to the said law to the best of our judgment and ability.

Sworn to at ———, this ——— day of ———, A. D. 18—, J. P.  
Before me,

##### B.

#### DIRECTIONS FOR THE GUIDANCE OF VOTERS IN VOTING.

The voter is only to vote for one candidate unless two or more are to be returned for the county, in which case he

may vote for one or for the number to be elected, or part CHAP. 4.  
of the number as he thinks fit.

The voter will go into the compartment and with a pencil there provided place a cross opposite the name or names of the candidate or candidates for whom he votes, thus X.

The voter will then fold the ballot so as to shew a portion of the back only and deposit it in the ballot box. The voter will then forthwith quit the polling place.

If a voter inadvertently spoils a ballot paper he can return it to the presiding officer, who will if satisfied of such inadvertence give him another ballot paper.

If the voter votes for more candidates than are to be elected, or places any mark on the ballot paper by which he can afterwards be identified, his vote will be void and will not be counted. If the voter takes a ballot paper out of the polling place, or deposits in the ballot box any other paper than the one given to him by the officer, he will be subject to imprisonment for any term not exceeding six months with or without hard labor.

In the following form of ballot paper given for illustration the candidates are John Smith, Thomas Jones, Robert Robertson and James Brown. Two candidates are to be elected, and the elector has marked his ballot paper and voted for Thomas Jones and James Brown :—

ELECTION FOR THE COUNTY OF		188
BROWN.		
I.	James Brown, of Port Hood, in the county of Inverness, barrister-at-law.	X
JONES.		
II.	Thomas Jones, of Halifax, in the county of Halifax, grocer.	X
ROBERTSON.		
III.	Robert Robertson, of Pictou, in the county of Pictou, yeoman.	
SMITH.		
IV.	John Smith, of Windsor, in the county of Hants, farmer.	



## CHAPTER 5.

## OF CONTROVERTED ELECTIONS AND CORRUPT PRACTICES.

1. The expression "the court" shall for the purposes of this Chapter mean the supreme court of this Province, and such court shall, subject to the provisions of this Chapter, have the same powers, jurisdiction and authority with reference to an election petition and the proceedings thereon as it would have if such petition were an ordinary cause within its jurisdiction.

Interpretation clause.

Powers of Court.

2. The following terms shall in this Chapter have the meanings hereinafter assigned to them unless there is something in the context repugnant to such construction, that is to say :

Interpretation of other terms.

"Election" shall mean an election of a member or members to serve in the house of assembly of this Province.

"Candidate" shall mean any person elected to serve in the house of assembly at an election, and any person who has been nominated as or declared himself a candidate at an election.

"Corrupt practices" or "corrupt practice" shall mean bribery and undue influence and illegal and prohibited acts in reference to elections or any of such offences ; as defined by act of the legislature.

"Rules of court" shall mean rules to be made as hereinafter mentioned. "Prescribed" shall mean prescribed by the rules of court.

"Petition" shall mean any election petition filed or presented under the authority of this Chapter, and none other, nor any election petition under any other law in force in this Province.

"Voter" shall mean any person who has or claims to have a right to vote in the election of a member to serve in the assembly.

3. A petition complaining of an undue return or undue election of a member to serve in the house of assembly for any county may be presented to the supreme court by any one or more of the following persons :—

Election petition, by whom made.

(1.) Some person who voted or who had a right to vote at the election to which the petition relates.

(2.) Some person claiming to have had a right to be returned or elected at such election.

(3.) Some person alleging himself to have been a candidate at such election.

And such petition is hereinafter referred to as an election petition.

CHAP. 5. 4. The following enactments shall be made with respect to the presentation of an election petition under this Chapter :—

By whom signed. (1.) The petition shall be signed by the petitioner or all the petitioners if more than one.

When presented. (2.) The petition shall be presented within twenty-one days after the return day of the writ for the election to which the petition relates, unless it questions the return or election upon an allegation of corrupt practices, and specifically alleges a payment of money or other reward to have been made by any member or on his account or with his privity since the time of such return in pursuance or in furtherance of such corrupt practices, in which case the petition may be presented at any time within twenty-one days after the date of such payment.

How made. (3.) Presentation of a petition shall be made by delivering it at the office of the prothonotary of the county to which the petition relates between the hours of ten of the clock in the forenoon and four o'clock in the afternoon, or in any other prescribed manner.

Security. (4.) At the time of the presentation of the petition or within three days afterwards security for the payment of all costs charges and expenses that may become payable by the petitioner,

(a.) To any person summoned as witness on his behalf, or

(b.) The member whose election or return is complained of (who is hereinafter referred to as the respondent) shall be given on behalf of the petitioner.

(5.) The security shall be to the amount of eight hundred dollars, and shall be given by a deposit of money with the prothonotary of the court. The deposit shall not be valid unless it is made in gold coin or Dominion notes, being a legal tender under the statutes of the Dominion at the time when the deposit is made. The prothonotary shall give a receipt for such deposit which shall be evidence of the sufficiency thereof.

Publication. 5. On presentation of the petition the prothonotary shall send a copy thereof to the sheriff of the county to which the petition relates, who shall forthwith publish the same in the county.

Notice to respondents. 6. Notice of the presentation of a petition under this Chapter and of the security, accompanied with a copy of the petition, shall within five days after the day on which the petition shall have been presented or within the prescribed time or within such longer time as the court or any judge thereof may under special circumstances or difficulty in

effecting service allow be served by the petitioner on the respondent or respondents; in case service cannot be effected on the respondent or respondents either personally or at his or their domicile within the time granted by the court or a judge, then it may be effected upon such other person or in such other manner as the court or a judge on the application of the petitioner may appoint.

7. The trial of every election petition shall be conducted before a judge of the supreme court, to be selected by the judges of said court. CHAP. 5.  
The trial to be before a judge.

8. Every election petition shall except where it raises a question of law for the determination of the court as hereinafter mentioned be tried by the judge so selected. Manner of trial.

9. Notice of the time and place at which an election petition will be tried shall be given not less than fourteen days before the day on which the trial is held in the prescribed manner. Notice of trial

10. The trial of an election petition shall take place in the county to which the petition relates; provided always that if it shall appear to the court that special circumstances exist which render it desirable that the petition should be tried elsewhere than in the county, it shall be lawful for the court to appoint such other place for the trial as shall appear most convenient. Place of trial.

11. The judge presiding at the trial may adjourn the same from time to time and from any one place to any other place within the county as to him may seem expedient. Adjournment.

12. At the conclusion of the trial the judge who tried the petition shall determine whether the member whose return or election is complained of, or any and what other person, was duly returned or elected, or whether the election was void, and shall forthwith certify in writing such determination to the Provincial Secretary, and upon such certificate being given such determination shall be final to all intents and purposes. Decision and certificate of judge

When any charge is made in an election petition of any corrupt practice having been committed at the election to which the petition refers, the judge shall in addition to such certificate and at the same time report in writing to the Provincial Secretary as follows:— Judge's report.

(a.) Whether any corrupt practice has or has not been proved to have been committed by or with the knowledge and consent of any and which candidate at such election, and the nature of such corrupt practices.

(b.) The names of any persons who have been proved at the time to have been guilty of any corrupt practice.



## CHAP. 5.

(c.) Whether corrupt practices have or whether there is reason to believe that corrupt practices have extensively prevailed at the election to which the petition relates.

Special report.

13. The judge may at the same time make a special report to the Provincial Secretary as to any matters arising in the course of the trial an account of which in his judgment ought to be submitted to the House of Assembly.

14. Where upon the application of any party to a petition made in the prescribed manner to the court it appears to the court that the case raised by the petition can be conveniently stated as a special case, the court may direct the same to be stated accordingly, and any such special case shall, as far as may be, be heard before the court and the decision of the court shall be final; and the court shall certify to the Provincial Secretary its determination in reference to such special case.

Questions of law reserved.

Provided always that if it shall appear to the judge on the trial of the said petition that any question or questions of law as to the admissibility of evidence or otherwise require further consideration by the court, then it shall be lawful for the said judge to postpone the granting of the said certificate until the determination of such question or questions by the court, and for this purpose to reserve any such question or questions in like manner as questions are usually reserved by a judge on a trial at *nisi prius*.

The Provincial Secretary shall give directions to carry into effect the determination of the Court.

15. The Provincial Secretary shall at the earliest practicable moment after he receives the certificate and report (if any) of the court or judge give the necessary directions and adopt all the proceedings necessary for confirming or altering the return, or for the issuing of a new writ for a new election or for otherwise carrying the determination of the court or judge into execution as circumstances may require. He shall also without delay if the legislature be then sitting, or if it be not then sitting within five days after the beginning of the then next session of the legislature, communicate to the House of Assembly the determination, report and certificate of the court or judge and his own proceedings thereon.

Provincial Secretary shall communicate to the House the determination of the Court.

The House of Assembly on being informed by the Provincial Secretary of such certificate and report (if any) shall order the same to be entered on their journals.

Special report.

16. Where the judge makes a special report the house may make such order in respect of such special report as they think proper.

Corrupt practices may be investigated before proof of agency.

17. On the trial of an election petition unless the judge otherwise directs any charge of a corrupt practice may be gone into and evidence in relation thereto received before

any proof has been given of agency on the part of any candidate in respect of such corrupt practice. CHAP. 5.

18. The trial of an election petition shall be proceeded with notwithstanding the acceptance by the respondent of an office of profit under the Crown. Trial to be proceeded with.

19. The trial of an election petition shall be proceeded with notwithstanding the prorogation of the house. Prorogation of House.

20. An election petition shall be in such form and state such matters as may be prescribed. Form of petition.

21. An election petition shall be served in such manner as may be prescribed. Service of petition.

22. Two or more candidates may be made respondents to the same petition, and their case may for the sake of convenience be tried at the same time; but for all the purposes of this Chapter such petition shall be deemed to be a separate petition against each respondent. Two or more respondents.

23. Where more petitions than one are presented relating to the same election or return all such petitions shall in the election list be bracketed together and shall be dealt with as one petition, but such petitions shall stand in the election list in the place where the last of such petitions would have stood if it had been the only petition presented unless the court shall otherwise direct. Where more than one petition.

24. The court may from time to time make and alter and revoke general rules and orders for the effectual execution of this Chapter and of the intention and objects thereof, and the regulation of the practice, procedure and costs of election petitions and the trial thereof and the certifying and reporting thereon; and such rules and orders shall be forthwith published in the *Royal Gazette* newspaper. Court to make rules.

25. Any general rules and orders made as aforesaid shall be deemed to be within the powers conferred by this Chapter, and shall from the date of their publication in the *Royal Gazette* be of the same force as if they were enacted in the body of this Chapter. Rule to have same force as chapter.

26. Any general rules and orders made in pursuance of this Chapter shall be laid before the House of Assembly within three weeks after they are made if the legislature be then sitting, and if the legislature be not then sitting within three weeks after the beginning of the then next session of the legislature. Rules to be laid before House.

27. The general rules of the Supreme Court in relation to controverted elections made in pursuance of "The Controverted Elections and Corrupt Practices Prevention Act 1875" shall continue in force until the same are revoked or amended under the authority of this Chapter, and so far as such rules or rules from time to time made under the Rules of Supreme Court to remain in force until revoked under authority of this Chapter.

- CHAP. 5. authority of this Chapter do not extend, the principles practice and rules on which committees of the house have heretofore acted in dealing with election petitions shall be observed so far as may be by the court and judge in the case of election petitions under this Chapter.
- Expenses of Judge. 28. The travelling and other expenses of the judge and all expenses properly incurred by the sheriff in providing him with a proper court shall be defrayed from the Provincial Treasury.
- Jurisdiction of Judge. 29. On the trial of an election petition the judge shall subject to the provisions of this Chapter have the same powers, jurisdiction and authority as a judge of the Supreme Court now possesses on circuit, and the court held by him shall be a court of record.
- Swearing witnesses. 30. Witnesses shall be subpoenaed and sworn in the same manner as nearly as circumstances admit as in a trial at *nisi prius*.
- Judge may compel attendance of witnesses. 31. On the trial of an election petition the judge may by order under his hand compel the attendance of any person as a witness who appears to him to have been concerned in the election to which the petition refers, and any person refusing to obey such order shall be guilty of contempt of court.
- Judge may examine witnesses. 32. The judge may examine any witness so compelled to attend or any person in court although such witness is not called and examined by or on behalf of petitioner and respondent or either of them. After the examination of a witness as aforesaid, by a judge, such witness may be cross-examined by or on behalf of the petitioner and respondent, or either of them.
- Witness fees. 33. The fees for travel and attendance payable to any person appearing to give evidence at the trial of an election petition under this chapter shall be the same and payable in the same manner as those allowed to witnesses in the Supreme Court and may be allowed to such person by a certificate under the hand of the judge; and such fees if the witness was called and examined by the judge shall be deemed part of the expenses of providing a court and in other cases shall be deemed to be costs of the petition.
- Withdrawal of petition. 34. An election petition under this Chapter shall not be withdrawn without the leave of the court or judge upon special application to be made in and at the prescribed manner, time and place.
- Notice of withdrawal. 35. No such application shall be made for the withdrawal of a petition until the prescribed notice has been given in the county to which the petition relates of the intention of the petitioner to make an application for the withdrawal of his petition.

36. On the hearing of the application for withdrawal CHAP. 5.  
 any person who might have been a petitioner in respect of Substitution of  
 the election to which the petition, relates may apply to the petitioner.  
 court or judge to be substituted as a petitioner for the  
 petitioner so desirous of withdrawing the petition.

37. The court or judge may if it or he think fit Judge may order  
 substitute as a petitioner any such applicant as aforesaid; security to re-  
 and may further, if the proposed withdrawal is in the main.  
 opinion of the court or judge induced by any corrupt  
 bargain or consideration, by order direct that the security  
 given on behalf of the original petitioner shall remain as  
 security for any costs that may be incurred by the substi-  
 tuted petitioner, and that to the extent of the sum deposited  
 as such security the original petitioner shall be liable to  
 pay the costs of the substituted petitioner: Provided  
 however, that the withdrawing petitioner may appeal from  
 the decision of one judge to the court as regards his  
 remaining security for the costs incurred by the substituted  
 petitioner on furnishing security for the costs of such  
 appeal; and such security shall be in the form directed in  
 section 4, sub-section 5.

38. If no such order is made with respect to the Security on be-  
 security given on behalf of the original petitioner, security half of substitut-  
 to the same amount as would be required in the case of a ed petitioner.  
 new petition and subject to the like conditions shall be  
 given on behalf of the substituted petitioner, before he  
 proceeds with his petition and within the prescribed time  
 after the order of substitution.

39. Subject as aforesaid a substituted petitioner shall Substituted peti-  
 stand in the same position as nearly as may be, and be tioner.  
 subject to the same liabilities, as the original petitioner.  
 If a petition is withdrawn the petitioner shall be liable Costs.  
 to pay the costs of the respondent.

40. Where there are more petitioners than one no Withdrawal  
 application to withdraw a petition shall be made except must be with  
 with the consent of all the petitioners. consent of all  
petitioners.

41. In every case of the withdrawal of an election Judge shall re-  
 petition under this Chapter, the court or judge shall report port in case of  
 to the Provincial Secretary whether in its or his opinion withdrawal.  
 the withdrawal of such petition was the result of any  
 corrupt arrangement, or in consideration of the withdrawal  
 of any other petition, and if so the circumstances attending  
 the withdrawal.

42. An election petition shall be abated by the death Death of peti-  
 of a sole petitioner or of the survivor of several petitioners. tioner.

43. The abatement of a petition shall not affect the Liability of peti-  
 liability of the petitioner to the payment of costs previously tioner.  
 incurred.

CHAP. 5. 44. If before the trial of any election petition any of  
 Death, &c., of the following events happen in the case of the respondent,  
 respondent. that is to say :

- (1.) If he dies ;
- (2.) If the House of Assembly have resolved that his seat is vacant ;
- (3.) If he gives in and at the prescribed manner and time notice to the court that he does not intend to oppose the petition ;

Notice of such event having taken place shall be given in the county to which the petition relates, and within the prescribed time after the notice is given any person who might have been a petitioner in respect of the election to which the petition relates may apply to the court or judge to be admitted as a respondent to oppose the petition, and such person shall on such application be admitted accordingly either with the respondent if there be a respondent, or in place of the respondents ; and any number of persons not exceeding three may be so admitted.

Respondent not opposing petition. 45. A respondent who has given the prescribed notice that he does not intend to oppose the petition shall not be allowed to appear or act as a party against such petition in proceedings thereon, and shall not sit or vote in the House of Assembly until the house has been informed of the report on the petition, and the court or judge shall in all cases in which such notice has been given in the prescribed time and manner report the same to the Provincial Secretary.

Costs and charges how defrayed. 46. All costs, charges and expenses of and incidental to the presentation of a petition under this Chapter and to the proceedings consequent thereon, with the exception of such costs, charges and expenses as are otherwise provided for, shall be defrayed by the parties to the petition in such manner and in such proportions as the court or judge may determine, regard being had to the disallowance of any costs, charges or expenses which may in the opinion of the court or judge have been caused by vexatious conduct, unfounded allegations or unfounded objections on the part either of the petitioner or respondent, and regard being had to the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused, whether such parties are or are not on the whole successful. The costs may be taxed in the prescribed manner, but according to the same principles as costs between parties in actions at law ; and such costs may be recovered in the same manner as the costs of an action at law, or in such other manner as may be prescribed.

47. In the event of costs being awarded in favor of CHAP. 5. any party against any petitioner, such party shall after the expiration of thirty days from the rendering of the decision by the judge, or, in case of an appeal, by the court, upon the production of a certificate of taxation by the proper officer, be entitled to receive out of the deposit the amount taxed to him as aforesaid, if the aggregate of the costs taxed against the said petitioner, certificates whereof are within the said period of thirty days filed with the registrar, clerk or other proper officer, do not exceed the deposit; or if the total amount of the said certificates so filed as aforesaid exceed the deposit, then his proportion thereof; and in the event last aforesaid such party shall be entitled forthwith to issue execution according to the practice in ordinary cases against the petitioner's goods or lands for the residue of the costs so taxed to him as aforesaid.

Costs payable thirty days after decision, out of deposit.

If deposit insufficient by execution.

48. Where it is found by the report of the judge upon an election petition that any corrupt practice has been committed by or with the knowledge and consent of any candidate at an election, his election if he has been elected shall be void, and he shall during the five years next after the date of his being so found guilty be incapable of being elected to and of sitting in the House of Assembly, and of being registered as a voter and of voting at any election, and of holding any office at the nomination of the Lieutenant-Governor, or any municipal office, or of being appointed or acting as a justice of the peace.

Candidate guilty of corrupt practice.

49. If on the trial of any election petition it is proved that any corrupt practice has been committed by any elector voting at the election, his vote shall be null and void.

Elector guilty of corrupt practice.

50. If on the trial of any election petition any candidate is proved to have personally engaged any person at the election to which such petition relates as a canvasser or agent in relation to the election, knowing that such person has within five years previous to such engagement been found guilty of any corrupt practice by any competent legal tribunal or by the report of the judge upon an election petition under this Chapter, the election of such candidate shall be void.

Candidate engaging agent formerly guilty of corrupt practices.

51. Any person other than a candidate found guilty of any corrupt practice in any proceeding in which after notice of the charge he has had an opportunity of being heard, shall during the five years next after the time at which he is so found guilty be incapable of being elected to and of sitting in the House of Assembly, and of being registered as a voter and of voting at any election, and of holding any office at the nomination of the Lieutenant-

Persons other than candidates guilty of corrupt practices.

CHAP. 5. Governor, or any municipal office, or of being appointed or acting as a justice of the peace.

Perjury of witnesses.

52. If at any time after any person has become disqualified by virtue of this Chapter the witnesses or any of them on whose testimony such person shall have so become disqualified shall upon the prosecution of such person be convicted of perjury in respect of such testimony, it shall be lawful for such person to move the court to order, and the court shall upon being satisfied that such disqualification was procured by reason of perjury, order that such disqualification shall thenceforth cease and determine; and the same shall cease and determine accordingly.

Wilful refusal, &c., of returning officer to make return.

53. If any returning officer wilfully delays, neglects or refuses to return any person who ought to be returned to serve in the House of Assembly for any county, such person may in case it has been determined on the hearing of an election petition under this Chapter that such person was entitled to have been returned, sue the officer having so wilfully delayed, neglected or refused duly to make such return of his election in any court of record in Nova Scotia, and shall recover double the damages he has sustained by reason thereof, together with full costs of suit, provided such action be commenced within one year after the commission of the act on which it is grounded, or within six months after the conclusion of the trial relating to such election.

Reckoning time.

54. In reckoning time for the purposes of this Chapter the same principles and practice shall apply and obtain as in ordinary proceedings in the Supreme Court.

Election or return, how questioned.

55. No election or return to the house shall be questioned except in accordance with the provisions of this Chapter.

Sheriff, &c., complained of in petition be deemed a respondent.

56. Where an election petition complains of the conduct of a sheriff or returning officer, such sheriff or returning officer shall for all the purposes of this Chapter, except the admission of respondents in his place, be deemed a respondent.

Petition complaining of no return.

57. A petition complaining of no return may be presented to the court, and shall be deemed to be an election petition within the meaning of this Chapter, and the court may make such order thereon as it thinks expedient for compelling a return to be made, or may allow such petition to be heard by the judge in manner hereinbefore provided with respect to ordinary election petitions.

Respondent may give evidence against person for whom seat is claimed.

58. On the trial of a petition under this Chapter, complaining of an undue return and claiming the seat for some person, the respondent may give evidence to prove that the election of such person was undue in the same

manner as if he had presented a petition complaining of such election. CHAP. 5.

59. Any person who according to the law for the time being is entitled to practise as an attorney or solicitor in Nova Scotia may practise as agent or attorney, and any person who by the law for the time being is entitled to practise as a barrister-at-law may practise as a counsel in cases of election petitions and all matters relating to elections before the court or judge. Attorney, &c.,  
may practise in  
case of election  
petitions.

PREVENTION OF CORRUPT PRACTICES.

60. No candidate shall at any election, nor shall any other person acting on his behalf, either provide or furnish drink or other refreshment to any elector during such election, from nomination day to polling day, both inclusive, or pay for, procure, or engage to pay for, any such drink or other refreshment. Candidates not  
to provide re-  
freshments for  
electors.

61. No candidate or any other person shall furnish or supply any ensign, standard or set of colours, or any other flag, to or for any person or persons whomsoever, with intent that the same should be carried or used in any county on the day of election, or within eight days before such day, or during the continuance of such election or the polling by such person or any other, as a party flag, to distinguish the bearer thereof and those who may follow the same as the supporters of such candidate or of the political or other opinions entertained or supposed to be entertained by such candidate; nor shall any person for any reason carry or use any such ensign, standard or set of colours or other flag, as a party flag, within such county on the day of any such election or polling, or within eight days before such day, or during the continuance of such election. Candidates, &c.,  
not to furnish  
flags.

62. No candidate or any other person shall furnish or supply any ribbon, label or like favor, to or for any person whomsoever, with intent that the same should be worn or used within such county on the day of election or polling or within eight days before such day or during the continuance of such election, by such person or any other as a party badge to distinguish the wearer as the supporter of such candidate, or of the political or other opinions entertained or supposed to be entertained by such candidate; nor shall any person use or wear any ribbon, label or other favor, as such badge either on his person or affixed to any horse or vehicle, within such county on the day of any such election or polling, or within eight days before such day, or during the continuance of such election. Candidates, &c.,  
not to furnish  
ribbon, &c.



## CHAP. 5.

Penalties.

63. Every person offending against any of the provisions of the three next preceding sections shall be punishable by fine not exceeding one hundred dollars, or imprisonment not exceeding three months, or by both, in the discretion of the Court.

No liquor to be sold or given on polling day.

64. No spirituous or fermented liquors or strong drinks shall be sold or given at any hotel, tavern or shop, or other place whatever within the limits of any polling district during the whole of the polling day at any election under a penalty of one hundred dollars for every offence; and the offender shall be subject to imprisonment, not exceeding six months, at the discretion of the judge or court, in default of payment of such fine.

Penalties for providing refreshments.

65. Every candidate who corruptly, by himself or by or with any person, or by any other ways or means on his behalf or with his knowledge and consent, at any time either before or during any election, directly or indirectly gives or provides or causes to be given or provided, or is accessory to the giving or providing, or pays wholly or in part any expenses incurred for, any meat, drink, refreshment or provision to or for any person in order to be elected or for being elected, or for the purpose of corruptly influencing such person or any other person to give or refrain from giving his vote at such election, shall be deemed guilty of the offence of treating, and shall forfeit the sum of two hundred dollars to any person who shall sue for the same, with full costs of suit, or shall suffer imprisonment in the common jail where the offence was committed for a term not exceeding three months, in addition to any other to which he may be liable therefor under any other provision of this Chapter; and on the trial of an election petition, there shall be struck off from the number of votes given for such candidate one vote for every person who shall have voted and is proved on such trial to have corruptly accepted or taken any such meat, drink, refreshment or provision:

And the giving or causing to be given to any voter on the nomination day or day of polling on account of such voter having voted or being about to vote, any meat, drink or refreshment, or any money or ticket to enable such voter to procure refreshment, shall be deemed an unlawful act, and the person so offending shall on summary conviction, thereof before any justice of the peace forfeit the sum of ten dollars, and in default of payment shall be imprisoned in the county jail for a period not exceeding ten days.

Hiring teams and vehicles, and penalties therefor.

66. And whereas doubts may arise as to whether the hiring of teams and vehicles to convey voters to and from the polls, and the paying of railway fares and other expenses of voters be or be not according to law, it is

declared and enacted that the hiring or promising to pay CHAP. 5. or paying for any horse, team, carriage, cab or other vehicle by any candidate or by any person on his behalf, to convey any voter or voters to or from the poll, or to or from the neighbourhood thereof at any election, or the payment by any candidate or by any person on his behalf of the travelling and other expenses of any voter in going to or returning from any election, are and shall be unlawful acts; and the person so offending shall forfeit the sum of one hundred dollars to any person who shall sue for the same; and any voter hiring any horse, cab, cart, waggon, sleigh, carriage or other conveyance for any candidate, or for any agent of a candidate, for the purpose of conveying any voter or voters to or from the polling place or places, shall *ipso facto* be disqualified from voting at such election, and for every such offence shall forfeit the sum of one hundred dollars to any person suing for the same.

67. Every candidate who corruptly, by himself or by Personation. or with any other person on his behalf, compels or induces or endeavors to induce any person to personate any voter shall, in addition to any other punishment to which he may be liable for such offence, be liable to forfeit the sum of two hundred dollars to any person suing for the same, or shall suffer imprisonment as aforesaid for a term not exceeding three months.

68. The following persons shall be deemed guilty of Persons deemed guilty of bribery. bribery, and shall be punishable accordingly:—

I. Every person who shall directly or indirectly, by himself or by any other person on his behalf, give or lend, or agree to give or lend, or shall offer, promise, or promise to procure, or to endeavour to procure, any money or valuable consideration, to or for any voter, or to or for any person on behalf of any voter, or to or for any other person in order to induce any voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election.

II. Every person who shall directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure, or to endeavour to procure, any office, place or employment, to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of any voter having voted or refrained from voting at any election,

CHAP. 5.

III. Every person who shall directly or indirectly, by himself or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure or endeavour to procure the return of any person to serve in General Assembly, or the vote of any voter at any election.

IV. Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procure or engage, promise or endeavour to procure the return of any person to serve in General Assembly, or the vote of any voter at any election.

V. Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person, with the intent that such money or any part thereof shall be expended in bribery at any election; or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election.

Penalty.

And any person so offending shall be liable to forfeit the sum of four hundred dollars to any person who shall sue for the same, together with full costs of suit; provided always that the foregoing enactment shall not extend or be construed to extend to any money paid or agreed to be paid for or on account of any legal expenses *bonâ fide* incurred at or concerning any election.

Other persons deemed guilty of bribery.

69. The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly:—

I. Every voter who shall before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree or contract for any money, gift, loan or valuable consideration, office, place or employment for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting, at any election.

II. Every person who shall after an election directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election.

Penalty.

And any person so offending shall on summary conviction before any two justices of the peace, stipendiary or police magistrate, be subject to a fine of forty dollars, and in default of payment shall be imprisoned in the county gaol for a period not exceeding one month.

Penalty for using violence to, intimidating or interfering with voters.

70. Every person who shall directly or indirectly, by himself or by any other person on his behalf, make use of or threaten to make use of any force, violence or restraint,

or inflict or threaten the infliction by himself or by or through any other person of any injury, damage, harm or loss, or in any other manner practice intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election; or who shall by abduction, duress or any fraudulent device or contrivance impede, prevent or otherwise interfere with the free exercise of the franchise of any voter, or shall thereby compel, induce or prevail upon any voter either to give or refrain from giving his vote at any election, shall be deemed to have committed the offence of undue influence, and shall be liable to forfeit the sum of two hundred dollars to any person who shall sue for the same, together with costs of suit. CHAP. 5.

71. The offences of bribery, treating or undue influence, or any of such offences, as defined by this Chapter or any other Act of the Legislature of this Province, personation or the inducing any person to commit personation, or any wilful offence against any one of the seven next preceding sections of this Chapter, shall be corrupt practices within the meaning of the provisions of this Chapter. Bribery, treating, &c., shall be corrupt practices

72. No person shall be excused from answering any question put to him in any action, suit or other proceeding in any court, or before any judge, commissioner or other tribunal touching or concerning any election, or the conduct of any person thereat or in relation thereto, on the ground of any privilege, or on the ground that the answer to such question will tend to criminate such person. No person to be excused from answering before a judge, &c.

73. Every executory contract, or promise, or undertaking, in any way referring to, arising out of, or depending upon any election under this Chapter, even for the payment of lawful expenses or the doing of some lawful act, shall be void in law; but this provision shall not enable any person to recover back any money paid for lawful expenses connected with such election. Executory contract, &c., void.

74. No payment (except in respect of the personal expenses of a candidate) and no advance, loan or deposit shall be made by or on behalf of any candidate at any election, before or during or after such election, on account of such election, otherwise than through an agent or agents, whose name or names, address or addresses, have been declared in writing to the sheriff on or before the nomination day or through an agent or agents to be appointed in his or their place as herein provided; and any person making any such payment, advance, loan or deposit otherwise than through such agent or agents shall be guilty of an offence against this Chapter. Payments on account of election to be through agents.

## CHAP. 5.

Sheriff to pub-  
lish names of  
agents.

In case of death  
of any agent  
another to be  
appointed.

Bills to be sent  
in one month  
after declaration  
day.

Statement of  
candidate's ex-  
penses to be  
published.

It shall be the duty of the sheriff to publish on or before the nomination day the name and address or the names and addresses of the agent or agents appointed in pursuance of this section.

In the event of the death or legal incapacity of any agent appointed in pursuance of this section, the candidate shall forthwith appoint another agent in his place, giving notice to the sheriff of the name and address of the person so appointed, which shall be forthwith published as hereinbefore provided by the sheriff.

75. All persons who have any bills, charges or claims upon any candidate for or in respect of any election, shall send in such bills, charges or claims within one month after the day of the declaration of the election to such agent or agents as aforesaid; otherwise such persons shall be barred of their right to recover such claims, and every or any part thereof: Provided always that in the event of the death within the said month of any person claiming the amount of any such bill, charge or claim, the legal representative of such person shall send in such bill, charge or claim within one month of his obtaining probate or letters of administration, or of his becoming otherwise able to act as such legal representative, otherwise the right to recover such claim shall be barred as aforesaid; and provided also that such bills, charges and claims shall and may be sent in and delivered to the candidate, if and so long as during the said month there shall, owing to death or legal incapacity, be no such agent; and provided also that the agent shall not pay any such bill, charge or claim without the authority of the candidate, as well as the approval of the agent.

76. A detailed statement of all election expenses incurred by or on behalf of any candidate, including such expected payments as aforesaid, shall within two months after the election (or in cases where by reason of the death of the creditor no bill has been sent in within such period of two months, then within one month after such bill has been sent in) be made out and signed by the agent, or if there be more than one, by every agent who has paid the same (including the candidate in cases of payments made by him) and delivered with the bills and vouchers relative thereto to the sheriff; and the sheriff for the time being shall at the expense of the candidate within fourteen days insert or cause to be inserted an abstract of such statement, with the signature of the agent or agents thereto, in some newspaper published or circulating in the county where the election was held; and any agent or candidate who makes default in delivering to the sheriff the state-

ments required by this section shall incur a penalty not exceeding twenty dollars for every day during which he so makes default; and any agent or candidate who wilfully furnishes to the sheriff any untrue statement shall be guilty of an offence against this Chapter; and the said sheriff shall preserve all such bills and vouchers, and during the six months next after they shall have been delivered to him, shall permit any voter to inspect the same on payment of a fee of twenty cents. CHAP. 5.

77. No sheriff or presiding officer for any polling district, nor any partner or clerk of either of them, shall act as agent for any candidate in the management or conduct of his election for such county; and if any sheriff or presiding officer, or the partner or clerk of either of them so acts, he shall be guilty of an offence against this Chapter. Sheriff or presiding officer, nor partner or clerk of either of them, not to be agent for any candidate.

78. The words "personal expenses" as used in this Chapter with respect to the expenditure of any candidate in relation to the election at which he is a candidate shall include the reasonable travelling expenses of such candidate, and the reasonable expenses of his living at hotels or elsewhere, for the purpose of and in relation to such election. Personal expenses.

#### MISCELLANEOUS PROVISIONS.

79. Where the sheriff is by this Chapter required or authorized to give any public notice, and no special mode of giving the same is mentioned, he may give the same by advertisement, placards, handbills, or such other means as he may think best calculated to give the information to the electors. Notice by sheriff, how given.

80. Any party to an election petition, whether petitioner or respondent, may at any time after such petition is at issue, before or pending the trial thereof, be examined by a judge or examiner in the manner hereinafter directed by a party adverse in point of interest touching any matter raised by such petition; and any party so examined may be further examined on his own behalf in relation to any matter respecting which he has been examined in chief; and when one of several petitioners or respondents has been so examined, any other petitioner or respondent united in interest may be examined on his own behalf or on behalf of those united with him in interest to the same extent as the party so examined: Provided that such explanatory examination must be proceeded with immediately after the examination in chief and not at any future period, except by leave of the court or judge. Any party to a petition can be examined.

## CHAP. 5.

Where any petition has been filed<sup>d</sup> claiming the seat for a candidate, such candidate, although not a party to the petition, may be orally examined as if he were a petitioner.

How and when such examination is to take place.

81. Any party to be examined orally under the provisions of this Chapter, shall be so examined by or before a judge, a master of the Supreme Court, prothonotary of the court in which such election petition is pending, or before any barrister-at-law named for the purpose by the court or the judge; and such examination shall take place in the presence of the parties, their counsel, agents or attorneys; and the party so examined orally shall be subject to cross-examination and re-examination; and such examination, cross-examination and re-examination shall be conducted as nearly as may be in the mode now in use in courts of common law on a trial at *nisi prius*, or in equity at the hearing of a cause; subject to the provisions hereinafter made.

Depositions, how to be taken.

82. The depositions taken upon any such oral examination as aforesaid shall be taken down in writing by the examiner, not ordinarily by question and answer, but in the form of a narrative; and when completed shall be read over to the witness and signed by him in the presence of the parties, or of such of them as may think fit to attend: Provided always that in case the witness shall refuse or be unable to sign the said depositions, then the examiner shall sign the same; and such examiner may upon every examination state any special matter to the court if he shall think fit. Provided also that it shall be in the discretion of the examiner to put down any particular question or answer if there should appear to be any special reason for so doing; and any questions which may be objected to shall at the request of either party be noticed or referred to by the examiner in or upon the depositions, and he shall state his opinion thereon to the counsel, agents, attorneys or parties; and if requested by either party he shall refer to such statement on the face of the depositions.

Original depositions to be filed.

83. When the examination before the examiner shall have been concluded the original depositions, authenticated by the signature of such examiner, shall be transmitted by him to the office of the court to be there filed, and any party to the petition may have a copy thereof, or of any part thereof, upon payment for the same in such manner as shall be prescribed by the court in that behalf.

Attendance upon examiner.

84. The attendance of a party or other person for oral examination or cross-examination before the examiner may be required by a writ of subpoena *ad testificandum* or *duces tecum*, in like manner as such party or person would be required to attend the trial of the petition, and

any party or person upon being served with such writ shall be bound to attend before the examiner; but such party or person shall be entitled to the like payment for attendance and expenses as if he had been subpoenaed to attend upon the trial. CHAP. 5.

85. The sheriff, gaoler or other officer having the custody of any prisoner may take such prisoner for examination before the examiner under the authority of this Chapter, if so ordered by the court or a judge. Sheriff may take prisoner before examiner.

86. Forty-eight hours' notice of any such oral examination or cross-examination shall be given to the opposite party or parties. Notice.

87. Any party or person refusing or neglecting to attend at the time and place appointed for his examination or cross-examination, or refusing to be sworn or to answer any lawful question put to him by the examiner or by any party entitled to do so or his counsel, agent or attorney, may be punished as for a contempt of court; provided always that if any witness shall demur or object to any question which may be put to him, the question so put and the demurrer or objection of the witness thereto shall be taken down by the examiner and transmitted by him to the office of the court to be there filed, and the validity of such demurrer or objection shall be decided by the court or a judge, and the costs of and occasioned by such demurrer or objection shall be in the discretion of the court or judge. Refusal of any person to attend or answer.

88. Any party to a petition shall be entitled to use upon the trial of such petition depositions taken by or before the examiner in accordance with the provisions of this Chapter: Provided that where such party uses any portion of a deposition so taken it shall be competent for the party against whom it is used to put in the entire evidence so taken, as well that in chief as that in explanation. Depositions, how used.

89. Any party to any election petition whether petitioner or respondent may at any time after such petition is at issue before or pending the trial thereof, obtain a rule or order of the court or a judge requiring the adverse party to produce within ten days after the service thereof under oath all documents in his custody or power relating to the matters in question, saving all just exceptions, and to deposit the said documents with the clerk of the court, and upon such documents being produced the party requiring such production or his agent or attorney may inspect the same and take examined copies thereof: Provided that when any person upon whom a rule or order to produce has been served wishes to avail himself of any such exception as above mentioned, he must in his affidavit Production of documents.



CHAP. 5. on production assign a sufficient reason why he should not produce and deposit the same in manner aforesaid.

Rule for production of documents may issue in vacation.

90. The rule or order referred to in the preceding section shall issue in vacation as in term, and may be obtained on the last as well as other days of term, and such rule or order shall be dated the day of the week, month and year on which the same was drawn up, and need not specify any other time or date, and such rule or order may be obtained by the party requiring the same, his agent or attorney, from the prothonotary of the court.

Service thereof.

91. The rule for the production of documents shall not require personal service, and it shall be sufficient to serve the same upon the agent or attorney of the party.

Refusing to obey such rule.

92. Any party neglecting or refusing to obey a rule for the production of documents, may be punished as for a contempt of court.

Affidavit on production.

93. The affidavit on production to be made by the party who has been served with the rule for production may be in the form or to the effect of the schedule to this Chapter, varied as the facts require.

Judge may direct proceeding for the punishment of guilty candidate.

94. Whenever the judge presiding at the trial of any election petition reports any candidate or person as having been proved at such trial guilty of a corrupt practice, such judge may in his discretion direct the proper person to take the necessary proceedings for the punishment of such candidate or person.

When respondent's presence necessary, trial not to be commenced during session of Legislature.

95. Whenever it appears to the court or judge that the respondent's presence at the trial is necessary, the trial of an election petition shall not be commenced during any session of the Legislature, and in the computation of any delay allowed for any step or proceeding in respect of any such trial, or for the commencement of such trial, under the next following section, the time occupied by any such session shall not be reckoned.

Time of trial.

96. Subject to the provisions of the next preceding section, and except that it shall not be commenced or proceeded with during any term of the Supreme Court at which the judge trying it is by law bound to sit, the trial of every election petition shall be commenced within six months from the time when such petition has been presented, and shall be proceeded with *de die in diem* until the trial is over, unless on application supported by affidavit it be shewn that the requirements of justice render it necessary that a postponement of the case should take place: Provided that whenever three months have elapsed after such petition is at issue without the day for the trial being fixed any elector may on application, if the court or

Postponement of trial.

judge think proper, be submitted for the petitioner on such terms as shall be just. CHAP. 5.

97. In case, on the trial of an election petition, it is determined that the election is void by reason of any act of an agent committed without the knowledge and consent of the candidate and that costs should be awarded to the petitioner in the premises, the agent may be condemned to pay such costs, and the court or judge shall order that such agent be summoned to appear at a time fixed in such summons, in order to determine whether such agent should be condemned to pay such costs. If at any time so fixed the agent so summoned do not appear he shall be condemned on the evidence already adduced to pay the whole or a due proportion of the costs awarded to the petitioner, and if he do appear the court or judge, after hearing the parties and such evidence as shall be adduced, shall give such judgment as to law and evidence shall appertain. The petitioner shall have process to recover such costs against such agent in like manner as he might have process against the respondent, and no process shall issue against the respondent to recover such costs until after the return of process against such agent.

Agent to pay costs of petition in certain cases.

98. Every person guilty of a violation of or offence against this Chapter for which no special penalty is hereinbefore provided, shall forfeit a sum not exceeding one hundred dollars, and in default of payment shall be imprisoned for a term not exceeding three months.

General penalty for violation of this Chapter.

99. The pecuniary penalties hereby imposed for the offences of bribery or undue influence respectively shall, unless otherwise herein provided, be recoverable by action or suit in the Supreme or County Court by any person who shall sue for the same.

Penalties, how recovered.

100. It shall be lawful for the court, in any case of prosecution for any offence against the provisions of this Chapter, to order payment to the prosecutor of such costs, and expenses as to the court shall appear to have been reasonably incurred in and about the conduct of such prosecution.

Court may order payment of prosecution.

101. In case of any indictment or information by a private prosecutor for any offence against the provisions of this Chapter, if judgment shall be given for the defendant he shall be entitled to recover from the prosecutor the costs to be taxed by the court, sustained by the defendant by reason of such indictment or information.

Defendant entitled to costs if judgment in his favor.

102. It shall not be lawful for the court to order payment of the costs of a prosecution for any offence against the provisions of this Chapter unless the prosecutor

Prosecutor must enter into recognizance or not be entitled to costs.

CHAP. 5. shall, before or upon the finding of the indictment or the granting of the information, enter into a recognizance with two sufficient sureties in the sum of five hundred dollars with the conditions following, that is to say, that the prosecutor shall conduct the prosecution with effect, and shall pay to the defendant, in case he shall be acquitted, his costs.

Limitation of actions.

103. No person shall be liable to any penalty or forfeiture hereby enacted or imposed unless some prosecution, action or suit for the offence committed shall be commenced against such person within the space of six months next after such offence shall be committed, and unless such person shall be summoned or otherwise served with writ or process within the same space of time, so as such summons or service of writ or process shall not be prevented by such person absconding or concealing himself or withdrawing from the province; and in case of any such prosecution, suit or process as aforesaid, the same shall be proceeded with and carried on without any wilful delay.

In an action for recovery of forfeiture sufficient evidence of plaintiff's declaration.

104. In an action for recovery of a forfeiture under this Chapter it shall suffice for the plaintiff to declare that the defendant is indebted to him in the amount of the forfeiture, and to allege the particular offence for which the action is brought, and that the defendant hath acted therein contrary to this Chapter, without mentioning the writ for holding the election or the return thereof.

How this Chapter is to be cited.

105. This Chapter may be named and cited as "The Controverted Elections and Corrupt Practices Prevention Act."

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#### SCHEDULE.

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*Form of Affidavit on production of books and papers.*

In the \_\_\_\_\_ Court.  
 Election for \_\_\_\_\_ holden on the \_\_\_\_\_ day  
 of \_\_\_\_\_ A. D.  
 I, \_\_\_\_\_ of \_\_\_\_\_, make oath and say :

1. That I have in my possession or power the documents relating to the matters in question set forth in the first and second parts of the first schedule hereto annexed.

2. I object to produce the said documents set forth in the second part of the said first schedule.

3. (*State upon what grounds objection is made, and verify the facts as far as may be.*) CHAP. 5.

4. I have had, but have not now in my possession or power, the documents relating to the matters in question set forth in the second schedule hereto annexed.

5. The last mentioned documents were last in my possession or power on (*state when.*)

6. (*State what has become of the last mentioned documents, to whom you have given them, and in whose possession they now are.*)

7. According to the best of my knowledge, remembrance, information and belief I have not now and never had in my own possession, custody or power, or in the possession, custody or power of my agents or attorneys, agent or attorney, or in the possession, custody or power of any other person on my behalf, any deed, account, book of accounts, minutes, vouchers, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document or other document whatever relating to the matters in question, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the first and second schedules hereto annexed.

Sworn, &c.

(*Annex the schedules, mentioning the documents in question.*)

## CHAP. 6.

## TITLE III.

OF PROVINCIAL PROPERTY: ITS REGULATION  
AND MANAGEMENT.

## CHAPTER 6.

## OF THE CASUAL AND TERRITORIAL REVENUE.

Casual and territorial revenue, where paid.

1. The proceeds of all the casual and territorial revenues of the Crown in the Province, as hereinafter designated, shall be paid into the Provincial Treasury.

Of what it consists.

2. The several casual and territorial revenues of the Crown, and the monies and funds and other rights which are placed at the disposal of the General Assembly for the use of the Province, under and by virtue of this Chapter, are declared to be—all rents, sums of money, returns, profits and emoluments arising, reserved, due or owing in any manner whatsoever, which shall have heretofore accrued and shall be in hand, or shall be hereafter to be received in respect of any lease, demise, sale, grant, transfer or occupation of any of the crown lands, mines, minerals or royalties of Her Majesty within the Province, whether in the island of Cape Breton or in any other part of the Province, of whatsoever nature or description, and also all fees and payments and commutation therefor, at the office of the Provincial Secretary received or payable, in respect of any writings, licenses, instruments or commissions there made or issued, and on which fees were heretofore payable to the Lieutenant-Governor and Provincial Secretary, and lastly, all fines, penalties and forfeitures imposed under any law of the Province and applicable for the use of Her Majesty.

Transfer of mines and minerals.

3. All the right and title of Her Majesty, whether in reversion or otherwise, of, in, to and out of all mines, minerals and oils whatsoever within the Province, including the island of Cape Breton, and also all rents and profits arising therefrom, are assigned, transferred and surrendered to the disposal of the General Assembly of this Province, subject only to the existing rights of the lessees and persons entitled under existing statutes, and of all persons claiming under them or any of them, and shall be managed, leased, disposed of, made available, paid and applied in such

manner, and to and by such officers and persons, and for such public uses and purposes, as by any act of the General Assembly for the time being shall be directed. CHAP. 6.

4. The General Assembly may provide for the managing, collecting and receiving of the revenues and other matters so surrendered and transferred, and for appointing proper officers for such revenues. Management provided for.

5. For the more easy collection of such revenues, the officers or persons charged therewith may in the name of Her Majesty, but to the use of the Province, take all such lawful ways and means, by information, suit or proceeding at law or in equity, as by or on behalf of Her Majesty might be adopted in respect of such revenues or any of the lands, mines or royalties chargeable therewith, if the surrender, transfer and assignment had never been made for the use of the Province. Collection provided for.

6. Nothing herein contained shall interfere with the grant, sale, lease or disposal of any of the ungranted lands of the Crown in this Province, except only the mines and minerals hereinbefore specified, by or on behalf of Her Majesty; but all such grants, sales, leases or disposals of such ungranted lands, and the management, direction or control thereof shall remain in such officers as Her Majesty shall deem proper, or as may be directed by any law of this Province, and the nett proceeds only of such grants, sales, leases or disposals of such ungranted lands, after deducting the necessary expenses of managing the same, shall be paid into the Treasury of the Province; but an account of such expenses shall be annually submitted to the General Assembly; and the salary or allowance of the officers employed and the expenses of the department shall be subject to the control and regulation of the General Assembly, and no other or greater salary or allowance or expenses shall be taken than such as shall be allowed thereby. Proceeds of Crown Lands, where payable.

7. This Chapter shall continue in operation until eighteen months after the demise of Her present Majesty (whom God long preserve), and thereafter everything herein contained, and the transfer, surrender, and assignment herein mentioned shall cease and determine. Duration of chapter.

CHAP. 7.

## CHAPTER 7.

## OF MINES AND MINERALS.

Definitions of  
terms used in  
Chapter.

1. The word "mine" in this Chapter shall mean any locality in which any vein, stratum or natural bed of coal, or of metalliferous ore or rock exists, or shall or may be worked. The verb "to mine" in this Chapter shall include any mode or method of working whatsoever whereby the ore, earth, or soil, or any rock, may be disturbed, removed, washed, sifted, smelted, refined, crushed or otherwise dealt with for the purpose of obtaining gold, coal, iron, copper or any other ore or metallic substance, and whether the same may have been previously disturbed or not. The term "gold-bearing quartz" shall be held to mean all auriferous rock *in situ*. "Alluvial mine" shall be held to mean gold-bearing earth or rock elsewhere than *in situ*. The terms "Commissioner" and "Commissioner of Mines" shall be held to mean the Commissioner of Public Works and Mines, and the term "deputy" or "deputy commissioner" shall be held to mean deputy commissioner of mines. "Lessee" shall include and mean sub-lessee or any person deriving title to a mine through a lessee of the Crown, unless such interpretation is repugnant to the context or to the spirit of this Chapter. The words "licensed mills," when used in this Chapter, shall signify mills and machinery licensed under this Chapter, and the words "licensed mill owner" the person or persons to whom such license shall be granted. The words "prospecting license" when used in this Chapter shall signify a license to search for mines of gold or gold and silver. The words "license to search" when used in this Chapter shall signify a license to prospect or search for mines other than gold or gold and silver. The words "license to work" when used in this Chapter shall signify a license to work a selected mine, which is not to exceed one square mile.

Mines office,  
when open.

2. The office of the Commissioner of Mines shall be opened at ten of the clock in the forenoon and closed at four of the clock in the afternoon, except on Saturdays, when it shall be closed at one of the clock in the afternoon; and all applications for licenses or leases shall be made during such office hours, and all such applications made at other times shall be void.

3. The Governor-in-Council shall continue to be CHAP. 7.

authorized to select and appoint, when and as often as occasion may require, a suitable person to act as Commissioner of Public Works and Mines for the Province, and suitable persons to act as deputy commissioners of mines in the several gold districts hereinafter provided for, and to define the limits of the jurisdictions of such deputy commissioners respectively; and by virtue of and during the continuance of such appointment such Commissioner of Public Works and Mines within the Province, and such deputy commissioners within the gold districts for which they are respectively appointed, shall exercise the powers of justices of the peace. Provided always that no such commissioner or deputy shall act as a justice of the peace at any court of general or special sessions, or in any matter out of session, except for the administering of oaths, the preservation of the peace, the prevention of crimes, the detection and commitment of offenders, and the carrying out of the provisions of this Chapter.

Governor-in-Council to appoint Commissioner of Public Works and Mines and deputy commissioners of mines.

Proviso.

4. The Governor-in-Council is authorized to select and appoint, when and as often as occasion may require, a suitable person to act as Deputy Commissioner of Public Works and Mines for the Province, and to define the limits of his authority and jurisdiction; and by virtue of and during the continuance of such appointment, such Deputy Commissioner of Public Works and Mines shall within the Province exercise the powers of a justice of the peace in the same manner and with the same limitations as in the next preceding section contained as to the Commissioner.

Governor-in-Council to appoint Deputy Commissioner of Public Works and Mines for Province.

5. The Governor-in-Council is authorized to select and appoint, when and as often as occasion may require, a suitable person to act as Inspector of Mines, who shall be a competent, scientific, practical mining engineer, whose duty it shall be to visit from time to time as may be deemed necessary and inspect the various mines belonging to or under lease from the Crown, to ascertain if the laws, stipulations and agreements relative to the working and management of such mines, and to the payment of rents and royalties accruing therefrom, are complied with, and if the same are being worked in a scientific, workmanlike and effective manner, due regard being had both to maintaining the value of such mines and providing for the safety of and protecting the persons employed therein, and any further duties that may be assigned to him under the provisions of this Chapter or of any other act of the Province now in force or hereafter to be passed by the Legislature; and he shall from time to time report in accordance with the facts to the commissioner. The

Governor-in-Council may appoint Inspector of Mines.

Duty of Inspector.



CHAP. 7. Governor-in-Council shall have power to appoint one or more deputy inspectors and mining surveyors, who shall be competent, practical men, and have satisfied the Board of Examiners appointed under this Chapter of their efficiency. They shall have the same power as the Inspector, but shall be under his direction. The inspector, deputy inspectors and surveyors shall from time to time report and annually record the approximate depth and extent of the mines of which no plans are kept in the Mines' office, as far as reasonably practicable, distinguishing the locations and numbers of the areas so being worked. The salaries of the Inspector and Deputy Inspectors of Mines shall be fixed by the Governor-in-Council.

Salaries.

Commissioner and Deputies, &c., to hold office during pleasure and give bonds.

Shall not be interested in mines

6. The Commissioner of Public Works and Mines, the Deputy Commissioner of Public Works and Mines, the Deputy Commissioner of Mines, the Inspector, and Deputy Inspectors of Mines, shall each hold office during pleasure, and shall give bonds for the faithful discharge of their duties in such sums as may be fixed by the Governor-in-Council, and shall not be, directly or indirectly interested in any mine or mining operations, or in the proceeds or profits thereof, nor shall any of them act as the agent or attorney of any person interested therein, under penalty of one thousand dollars for every offence, to be recovered in the Supreme Court.

Deputies ineligible to assembly.

Shall take no part in elections.

7. The Deputy Commissioner of Public Works and Mines, the Deputy Commissioners of Mines, and the Inspector of Mines and Deputy Inspectors, shall be incapable of being elected to or of sitting or voting in the House of Assembly; and any or either of them who shall so sit or vote shall forfeit two hundred dollars for every day on which he shall so sit or vote, to be recovered in the Supreme Court. None of such officers shall take any part or use any influence, directly or indirectly, in the election of any representative to sit in the Assembly, under a penalty of two hundred dollars for every such offence, to be recovered in the Supreme Court.

Governor-in-Council to select and appoint a Board of Examiners.

8. The Governor-in-Council is authorized to select and appoint a Board of Examiners, to be composed of the Inspector of Mines and seven persons conversant with coal mining, two of whom shall be colliers in actual practice, who shall have obtained certificates of competency. The members of the board shall hold office during pleasure, and their duties shall be the examination of colliery officials under the provisions of the Mines' Regulation Act.

9. The Governor-in-Council, on being satisfied of the discovery of gold or gold and silver in any locality, may by proclamation in the *Royal Gazette* of this Province declare such locality to be a gold district, and assign limits and boundaries to such district, and from time to time enlarge, contract or otherwise alter such limits.

Governor-in-Council may proclaim gold districts.

10. Quartz mines shall, so far as local peculiarities or other circumstances may permit, be laid off in areas of one hundred and fifty feet lengthwise of the general course of the strata, so far as can be determined at the time of making the first survey authorised by the commissioner in the district, and two hundred and fifty feet across, which shall hereafter be known and described as Class Number One.

Areas of class number one in quartz mines.

11. Areas shall be laid out as far as possible uniformly and in quadrilateral and rectangular shapes. Measurements of areas shall be horizontal, and each area shall be bounded by lines vertical with the horizon.

Areas, how laid out and measured.

12. Alluvial mines not under lease at the time of the passing of this Chapter, and alluvial mines under lease at such time but which shall hereafter be surrendered by their lessees or become forfeited to the Crown, shall be laid out, as far as local peculiarities will allow, as directed in the case of quartz mines, the courses of the respective boundary lines of such mines to be decided by the commissioner; and the advance payments or rents and royalties shall be the same as those of quartz mines.

Alluvial mines.

13. There shall be kept at the office of the commissioner a book of record for proclaimed gold districts and for unproclaimed districts or places in which applications for leases of areas are made, and another for prospecting licenses, wherein shall be entered all applications for areas, with the precise times of their being made, showing the descriptions of the areas applied for, the amounts paid, and the names of the applicants in full; and each deputy shall keep a book of record wherein shall be entered all applications for areas, with the precise times of their being made, showing the descriptions of the areas applied for, the amounts paid, the names of the applicants in full, with the names of the parties paying, the amounts of royalty received from the licensed mill owners, the names of the licensed mill owners, the amounts of royalty received from others than licensed mill owners, the names of the parties paying such royalty, the distinguishing numbers of the areas or the numbers of the leases covering the areas from which the gold or gold and silver was obtained, in respect of which such royalty was paid; and each deputy shall each

Record of applications for areas.

Records kept by deputies.

Returns to mines office.

CHAP. 7. week forward a return to the office of the commissioner, which return shall be a true transcript of the entries made in such book of record during the week previous to the making of such return, and shall then remit to the Commissioner the several sums so paid. Such books of record shall be open at all reasonable times to the inspection of all persons desiring to see the same.

Plans of gold districts to be kept in Mines office. 14. The Commissioner of Mines shall cause to be prepared and shall keep in his office plans of all gold districts, with the areas numbered thereon, and on which all areas applied for shall be distinctly designated by numbers. Each deputy shall prepare and keep a duplicate of a plan of the district under his jurisdiction, on which all areas applied for in such district shall be distinctly designated; and shall in his weekly returns report the distinguishing numbers of the areas applied for as indicated on such plan.

Duplicates kept by deputies. Applications for areas, to whom made. 15. All applications for leases of areas shall be made to the deputy commissioners for the districts in which the areas are situated if there be deputies for such districts; and where there are no deputies for such districts, or where the areas applied for are not within any proclaimed district, the applications shall be made to the Commissioner; and no such applications shall be received for areas already applied for or under license or lease.

Applications, how made. 16. Every application shall be in writing, defining the area or areas applied for, and shall be accompanied by a payment of two dollars for each and every of such areas; and the Commissioner of Mines or deputy commissioner, as the case may be, receiving such application shall endorse thereon the precise time of such receipt.

Mining leases, how executed. 17. Every lease granted under the provisions of this Chapter shall be executed on the part of the Crown by the Commissioner of Public Works and Mines under his hand and seal of office, and on the part of the lessee under his hand and seal, signed and affixed thereto by the lessee or his duly authorized attorney; and when a lease is executed by an attorney, the instrument conferring such power of executing shall be filed in the office of the Commissioner before such lease is executed by such attorney; and such lease shall be in the form in Schedule A, hereto annexed, and shall contain all the grants, demises, reservations, covenants, promises, provisions, conditions and agreements mentioned or intended in or by such schedule; and shall be subject to and contain the reservation of the rights of the owners of the soil, their heirs and assigns; and such lessee, his executors, administrators or assigns, where such lease is granted on private lands, shall, before

Form of lease.

making entry on such lands, obtain from the owners thereof CHAP. 7.  
 permission to enter, either by special agreement or in  
 accordance with the provisions of this Chapter.

18. When the holder of a lease of areas on private lands cannot make an agreement with the owner thereof for leave to enter and for easements, and for damage to such lands, and for the other purposes mentioned in section 20 of this Chapter, it shall be lawful for such holder to give notice to the owner or tenant to appoint an arbitrator to act with another arbitrator named by the lessee of the areas, in order to award the amount of damages to which the owner or tenant shall be entitled, by reason of the opening and working of a mine in such lands: and the doing the acts or things contemplated by this section and said section 20, and if any lessee shall enter and work upon the land leased before he shall have agreed with the owner of the land, or have proceeded to have his damages appraised, in accordance with this section, the owner may complain to the Supreme Court, who shall investigate the complaint, and if the same is substantiated, shall declare the lease to be forfeited.

Assessment of damages in case of dispute between land owner and mining lessee, &c.

19. The notice mentioned in the last preceding section shall when practicable be personally served on such owner, or his agent, if known, or tenant; and after reasonable efforts have been made to effect personal service without success then such notice shall be served by leaving it at the last place of abode of the owner, agent or tenant. Such notice shall be served, if the owner resides in the county in which the land is situate, ten days, if out of the county and within the Province, twenty days, and if out of the Province, thirty days, before the expiration of the time limited in such notice. If the proprietor refuses or declines to appoint an arbitrator, or when for any other reason no arbitrator is appointed by the proprietor in the time limited therefor in the notice provided for by the next preceding section, the warden of the municipality wherein the lands lie shall, on being satisfied by affidavit that such notice has come to the knowledge of such owner, agent, or tenant, or that such owner, agent, or tenant wilfully evades the service of such notice, or cannot be found, and that reasonable efforts have been made to effect such service, and that the notice was left at the last place of abode of such owner, agent, or tenant, appoint an arbitrator on his behalf.

Notice of arbitration, how served.

20. All arbitrators appointed under the authority of this Chapter shall be sworn before a justice of the peace to the impartial discharge of the duties assigned to them; and they shall forthwith proceed to estimate the reasonable damages which the owners and tenants of such lands,

Mode of assessing damages by arbitrators.

CHAP. 7. according to their several interests therein, shall sustain by reason of the opening of necessary shafts and other excavations, the construction of roads and drains, the erection of necessary works and buildings thereon, and of the occupation of so much thereof (to be determined by the Inspector of Mines in the event of any dispute arising in respect thereof) as the lessee may require for all purposes connected with the opening and working of a mine to the most advantage thereon, including therein all such spaces as may be necessary from time to time for a dumping ground or grounds for depositing the mineral mined, as well as slate, stone, shale, screenings, waste coal, refuse, rubbish, and all other material mined or excavated by such lessee and those claiming under him. In estimating such damages, the arbitrators shall determine the value of the land irrespectively of any enhancement thereof from the existence of gold or other mineral ores or metallic substances therein. In case such arbitrators cannot agree, they may select a third arbitrator; and when the two arbitrators cannot agree upon a third arbitrator, the warden of the municipality in which the lands lie shall select such third arbitrator. The award of any two of such arbitrators made in writing shall be final.

Proceedings in cases of unknown, uncertain or disputed ownership of lands.

21. When the person or persons entitled to such damages shall be unknown or uncertain, the lessee shall, by advertisement published in the *Royal Gazette* at Halifax, and in a newspaper (if any) published in the county where the lands lie, for at least thirty days, in which the lands shall be particularly described, call upon all persons having a right to such damages to appear before the warden of the municipality in which such lands lie on or before a certain day therein named, to be not less than thirty days after the first publication of such advertisement, to appoint an arbitrator; and if an arbitrator is not so appointed on or before such day, the warden and lessee shall each appoint an arbitrator, and all further proceedings shall be in accordance with the provisions of this Chapter; and the warden shall receive all moneys awarded in such case, and pay the same over to the treasurer of the municipality, and when the right to the ownership of the land shall be in dispute, the payment for damages awarded shall in like manner be made to the warden who shall pay the same to the treasurer of the municipality.

Party paying money under award not there liable.

22. Payment of such damages by the party liable therefor to the persons designated by the award as entitled thereto, or, if the award shall not designate the persons entitled, to such persons as in the absence of any dispute shall be ostensibly entitled thereto, shall exonerate the

party making payment; but any persons subsequently claiming to have been entitled to the damages so paid, may prosecute their claims by action for money had and received against the persons to whom the payment shall have been made. In case the award shall not designate to whom the money is to be paid, or in case the party designated shall decline to receive it, the party liable to the payment of the amount so awarded may exonerate himself from all further liability by paying the money so awarded to the prothonotary of the Supreme Court for the county. When such appraisement has taken place, such prothonotary shall, upon receipt thereof, deposit the same, less a commission of one per cent. thereon, at interest in a Government savings' bank, or in a chartered bank nearest to his office. Such prothonotary shall not be entitled under any circumstances to make any charge beyond such commission.

23. In case of disputed or unknown title, the Supreme Court or a judge thereof, on application of the claimant, shall order the damages paid to the treasurer of the municipality to be paid to the persons who, on due investigation by such court or judge, shall have established their right thereto; but no order shall be made until it shall be shown that notice has been given sufficient in the judgment of the court or judge to protect the rights of all persons who may be or who may claim to be interested.

Disputed and unknown titles settled by Supreme Court.

24. The lessee or licensee shall not be implicated in controversies between persons contesting title to the damages.

Lessee or licensee not implicated.

25. In no case in which the award shall find the amount of damages with sufficient certainty shall such award be set aside because the persons entitled to damages are not designated by name, or sufficiently designated, or by reason of irregularity as to the persons entitled, or of any matter of form; but the Supreme Court or judge shall rectify any error or informality; or shall adopt such proceedings as may be necessary for determining to whom the damages may be paid, or for otherwise carrying into effect the provisions and intent of this Chapter.

When amount of award is certain it shall not be set aside.

26. The parties obtaining licenses and leases under this Chapter and those deriving title under them shall be answerable for damages that may ensue from the falling in of land, or for other injury which may be sustained by the owners or tenants of such lands subsequent to the agreement for or award of damages required by the foregoing sections, by reason of the works of the parties obtaining licenses or leases, or of those under them, or deriving title from or through them. Where an agreement cannot be made with the owner of the land for any such subsequent

Licenses or leases liable for subsequent damages.

Subsequent damages, how ascertained in case of dispute.

CHAP. 7. damages, the holder of the lease may proceed to have them referred to arbitration in the manner provided and set forth in this and preceding sections with reference to the assessment of damages to lands and for entry.

**Term of lease.** 27. All leases shall be for the term of twenty-one years; but the holder of any such lease may at any time surrender the same by notice in writing signed by him, and filed, together with his counterpart of lease, in the office of the Commissioner; but in case the counterpart of the lease has been lost or cannot be obtained, an affidavit to that effect made by the lessee shall be received in place of such counterpart; but nothing herein contained shall be construed to discharge him from liability in respect of any covenants in the lease for or in respect of any act, matter or thing, for which at the date of such surrender he was liable under the terms of such lease.

**Leases, how forfeited.** 28. Such leases may be forfeited on failure to pay the stipulated royalties other than those arising from gold or gold and silver bearing material crushed or otherwise treated at a licensed mill, or to keep employed annually on the demised premises the number of days' labor herein-after specified, or to comply with any other of the provisions and stipulations in the leases contained.

**How lessees shall use demised lands.** 29. The holder of any such mining lease shall not use any part of the lands so demised for any other purposes whatsoever, except such as shall be necessary for making roads, opening drains, erecting necessary works, buildings, and all other purposes connected with the opening and working such mines to the most advantage; and all necessary ways and watercourses over the demised premises, whether expressly reserved in such lease or not, shall be considered as reserved to the Crown, and in respect to the making, alteration and use thereof shall be subject to such orders and regulations as the Governor-in-Council may from time to time consider expedient; and all licensees and lessees and other persons employed about the mines on such demised premises shall use the lands in such manner as will be least injurious to the owners and occupants of such lands or any other lands lying contiguous thereto.

**Amount of yearly labor on mining areas.** 30. There shall be employed each year on the demised premises a number of days' labour equivalent to forty days for every number one area comprised therein. The year for this purpose shall be computed from the first day of January, April, July or October, which shall first ensue after the date of the lease, unless the lease shall be dated on one of such days, in which case the year shall be computed from the date of the lease; but any lessee holding ten or more, but less than twenty, areas of class number

**Proviso.**

one in any gold district shall not be required during the first year of his holding to keep employed more than three-fourths of the number of days' labor above required to be performed per area ; in like manner, if holding twenty or more but less than thirty of such areas in the same district, he shall be required to keep employed only one-half ; and if holding thirty or more, only one-fourth the above required number of days' labor during such first year. CHAP. 7.

31. In computing the number of days' labor employed by any lessee at the termination of any year, all or any of the leases which he at the time holds of mining areas in any one district, which leases shall not contain a total of more than one hundred areas, may for this purpose be considered as one lease ; and if it is ascertained that an amount of labor equal to the whole amount which he is required to have performed upon the whole of the said areas has been actually expended upon any one or more of said areas, the law in this respect shall be held to have been complied with, although the lessee may not have employed upon the areas in each separate lease the number of days' labor required by the last preceding section. Mode of computing number of days' labor.

32. Where a lessee shall have employed in any one year a part only of the amount of labor required to be performed by him annually upon the premises demised to him in any one district, or under any one lease, the whole of the areas held by him, in such district, or under such lease, shall not necessarily become forfeited therefor, but only a part of such demised premises proportioned to the number of days' labor which such lessee has failed to perform shall become forfeited ; and such lessee shall make selection of that part of the demised premises which he will retain. To avail himself of the provisions of this section, a lessee must make known his selection by notice in writing to the Commissioner within ten days after the termination of the year for the non-performance of labor during which a portion of the premises demised to him becomes forfeited ; and the areas selected by him to be retained shall so far as possible be in a compact block and not detached from each other, and no number one area shall be divided in making such selection. Should any one lease contain areas thus retained and also areas which are forfeited, such lease shall be surrendered by the lessee, who shall receive a new lease of the areas so retained. Partial forfeiture of mining areas, proceedings in case of.

(a.) When the lessee named in any lease of gold and silver mining areas, or the assignee of such lessee, or such lessee and assignee together, shall have performed and fulfilled the requirements of section 30 of this Chapter in respect to the labor to be employed on the premises Gold and silver mining lease not forfeitable where certain amount of work done.



CHAP. 7. demised in and by such lease for the period of ten years, or shall have employed labor on such premises equivalent to the labor required by such section to be performed thereon for such period, such requirements shall be taken and held to have been fulfilled for the full term of such lease, and such lease shall not be liable to forfeiture for noncompliance with such requirements during the remainder of such term.

Proof required of labor, &c.

(b.) The lessee or assignee shall prove to the satisfaction of the Commissioner of Public Works and Mines, by affidavits sworn before such Commissioner or a justice of the peace, or by the returns required by section 60 of this Chapter, that such requirements have been so fulfilled, or that the labor so required has been employed on such demised premises, before he shall be entitled to the benefit of the preceding sub-section.

Certificate, how given.

(c.) When it shall be proved as prescribed by sub-section (b.) of this section to the satisfaction of such Commissioner, that such requirements have been complied with and fulfilled in the manner mentioned in sub-section (a.), the Commissioner shall grant a certificate under his hand and seal to such lessee or assignee, certifying that the requirements of section 30 of this Chapter have been complied with for the period of ten years, and that such lease is no longer forfeitable for non-compliance with the requirements of such section during the remainder of the term of such lease; and such certificate shall be registered in the book of registry in the Mines' office.

Forfeited mine vested in Crown.

33. When from any cause whatever a leased mine shall become forfeited to the Crown under the proceedings hereinafter by this Chapter directed all the right, title and interest which the holder of such forfeited lease had therein immediately previous to such forfeiture, shall upon such forfeiture become thereby vested in the Crown; but the lessee of any mine may during his lawful occupancy thereof take down and remove any houses, buildings, machines or other erections built or placed by him thereon, notwithstanding that the same may be considered in law as attached to the freehold.

Proviso.

Person occupying and staking off areas, &c., entitled to license or lease in preference to any other applicant.

34. Any person occupying and staking off any areas, or taking possession of by staking off any areas, on lands not lying within any proclaimed gold district, not exceeding 100 areas of class No. 1, shall be entitled to a license or lease, as the case may be, in preference to any other applicant. Every such person shall be entitled to one week and thereafter to twenty-four hours' time for making his application for every fifteen miles distance of the mine so

Time for making application.

occupied and staked off, from the office of the Commissioner CHAP. 7.  
at Halifax.

35. In all cases where mining areas, have previous to Mining areas leased before 1st April, 1864. occupied by virtue of a gold commissioner's authority, on private lands not subsequently revested in the Crown, and with respect to which no agreement has been made, nor was on the said first day of April being negotiated, for land damages between the lessee and the owner of the soil, the Commissioner shall proceed to arrange with the owners of the soil for such damages, by mutual agreement or arbitration, and to pay such damages, in the manner and form prescribed by the eighteenth and subsequent sections of this Chapter, for applicants for mining leases; and in such cases the Commissioner shall occupy, so far as circumstances will permit, the same position relative to the owners of the soil which, under the sections above referred to, would be held by an applicant for a mining lease on private lands, whose application is made after the passing of this Chapter.

Assessment of damages.

36. The Commissioner of Public Works and Mines may issue licenses to search for gold and silver, to be called "Prospecting Licenses," which shall be subject to the rules prescribed by this Chapter.

Prospecting licenses.

37. Any such license may include any area not exceeding one hundred areas of class No. 1 in extent, so as the same shall be laid off in quadrilateral and rectangular figures, and shall not in length exceed double the breadth thereof.

Shape and size of prospecting areas

38. Such license shall be in force for any period not exceeding six months from the date of the application therefor.

Duration of license.

39. All applications for prospecting licenses shall accurately define by metes and bounds the lands applied for, and shall be accompanied by a payment at the rate of fifty cents per area for every area up to ten areas in extent, and of twenty-five cents for every area in addition to that extent.

Applications for prospecting licenses.

40. Before such license shall be issued the applicant shall enter into a bond with two sureties to the satisfaction of the Commissioner, to recompense the proprietor of the soil in the event of entry being made on private lands for damages done to his lands, to make the returns at the expiration of the license and of the renewal, and to pay the royalties hereinafter required.

Bond to be given by applicant.

41. If the proprietor of private lands so entered upon shall seek damages he shall before the end of three months after the expiration of the license make his claim in writing

Damages against licensee, how assessed.

CHAP. 7. against the holder of such license, detailing the particulars and amount of claim; and if the claim is not adjusted by agreement between the parties within one month after notice thereof as aforesaid, it may be settled by arbitration in accordance with the provisions of section 18 and subsequent sections of this Chapter; but in such case either of the parties may give the required notice to appoint an arbitrator, and the warden of the municipality may appoint an arbitrator on behalf of either of such parties neglecting or refusing to make such appointment.

Renewal of license.

42. The holder of a prospecting license who shall have fulfilled all the terms and conditions thereof shall be entitled to a renewal thereof for a second period of six months upon like terms and conditions, except that the price of the same space shall be only half that paid on the previous application.

Licensee may select areas for lease.

43. Within the period for which the license or renewed license is granted the party holding the same shall be entitled to select any area or areas comprised therein of the size and form described in this Chapter; and shall be entitled to a lease of the areas selected upon the terms imposed herein.

Lessee or licensee not to enter upon buildings, garden &c.

44. No lease nor any prospecting license shall authorize entry upon any buildings or the curtilage appertaining to any house, store, barn or building, or upon any garden, orchard or grounds reserved for ornament, or under cultivation by growing crops, or enclosed, except with the consent of the occupier, or by license from the Governor-in-Council authorizing such entry, to be granted on special application, setting forth the circumstances under which the same is applied for, and on such terms as the case may require.

Exceptions.

Royalty.

45. On all leases of gold and gold and silver mines and prospecting licenses to search for gold, there shall be reserved a royalty of two per cent. upon the gross amount of gold and silver mined.

#### LICENSED MILLS.

Commissioner of Public Works & Mines may issue a license to run or use a "licensed mill."

46. The Commissioner of Public Works and Mines may issue a license to any person or persons (to be called "licensed mill owners") to run or use any mill or machinery (to be called a "licensed mill"), for the purpose of the reduction or concentration of quartz or other gold and silver bearing material, or the obtaining of the gold and silver therefrom by crushing, stamping, amalgamating or otherwise, and to retain out of such gold and silver a sufficient amount to pay the royalties prescribed by this Chapter, and no person or persons shall run or use such mill or machinery without such license therefor first had

and obtained, except in the case of mills or machinery CHAP. 7.  
worked by hand.

47. Before any such license shall be granted, the party applying therefor shall enter into a bond to Her Majesty in the penalty of two thousand dollars, to comply with the requirements of this Chapter in respect of licensed mill owners. Bond to be given by mill owner.

48. Every licensed mill owner shall keep on the demised premises a book or books of account to be supplied by the Commissioner of Mines, which shall at all times be open to the inspection and examination of the Commissioner of Mines, or the deputy or the Inspector of Mines, or any other person thereto authorized by the Commissioner of Mines, in which book or books shall be entered a clear and distinct statement of all quartz or other material reduced, concentrated, crushed, stamped or amalgamated at such licensed mill, and the following particulars in respect of the same :

I. The name of the owner or owners of each distinct parcel or lot of quartz or other material crushed.

II. The weight of each such parcel or lot.

III. The date of the crushing of the same.

IV. The actual yield in weight of gold or gold and silver from each such parcel or lot.

V. The royalty thereon, calculated at two per cent.

VI. The number of the lease of the mine or area (so far as the same is known or can be ascertained) from which each such parcel or lot was raised, and if he fail to keep such books or books of account his license may be revoked.

49. Each licensed mill owner shall pay or cause to be paid, in money, in weekly or other payments, as the Commissioner of Mines shall order, to the Commissioner or to the Deputy Commissioner for the district, a royalty of two per cent. on the gross amount of gold obtained by amalgamation or otherwise in the mill of such licensed mill owner, at the rate of nineteen dollars an ounce troy for smelted gold, and eighteen dollars an ounce troy for unsmelted gold, and of two per cent. on the silver, at the rate of one dollar per ounce troy. Mill owner not paying royalty.

50. In case any licensed mill owner shall fail to pay such royalty in the mode or at the times prescribed by or in accordance with this Chapter, he shall be liable to an action at the suit of the Commissioner of Mines as for money had and received to the use of such Commissioner ; and such action may be brought, according to the amount of the claim, in the same court which would have jurisdiction in case the amount claimed were an ordinary private debt, and his license may be revoked. Mill owner not paying royalty liable to action

## CHAP. 7.

Mill owner to  
make monthly  
returns under  
oath.

51. Every licensed mill owner shall file in the office of the Deputy Commissioner for the district on the first day of the month, or if there be no Deputy Commissioner for the district, then in the office of the Commissioner of Mines on or before the tenth day of each month, a return, being a copy of the entries in such book or books of account for the last preceding month, as prescribed by the forty-eighth section, which return shall be verified by the affidavit of the person principally employed in keeping such account, sworn before the Commissioner, Deputy Commissioner or a justice of the peace; and on failure to make such return or to verify the same as aforesaid, the license of any mill owner may be revoked.

Penalty for un  
licensed milling.

52. Any owner or part owner of any mill or machinery for the crushing or reduction of quartz or for the obtaining of gold or gold and silver therefrom (other than mills or machinery worked by hand) which shall be engaged, used or employed for the crushing or reduction of quartz or other gold or gold and silver bearing material or the obtaining of gold or gold and silver therefrom, without a license therefor first had and obtained as prescribed by this Chapter, and any person engaged as agent, servant, workman, clerk or otherwise in any such mill, shall forfeit and pay the sum of four hundred dollars for each such offence, and for every day in which such offence shall be committed the same shall be considered a new offence.

When account  
books, &c., fraud-  
ulent license may  
be revoked.

53. When the account books prescribed by this Chapter or any of the accounts hereby required shall be fraudulently or falsely kept, or the affidavits hereby prescribed or any of them shall be false or fraudulent, the license to the mill in respect of which the offence has been committed may be revoked, and the "licensed mill owner" shall be liable for each offence to a penalty of not more than two thousand dollars, to be recovered in the Supreme Court in the name of the Commissioner.

When licensed  
mill owner is not  
the owner license  
may be revoked.

54. In case a "licensed mill owner" is not the owner of the mill or machinery so licensed, the owner thereof may apply to the Commissioner to have said license revoked; and upon proof having first been given that the "licensed mill owner" has received reasonable notice that such application would be made, with the date thereof, and that the applicant is the legal owner of said mill and machinery, said license may be revoked.

Commissioner  
may in his judg-  
ment revoke mill  
licenses in cer-  
tain cases.

55. The Commissioner of Mines shall have authority to inquire into any alleged violation of the sections whereby such mill license may be revoked, and if in his judgment such violation has been committed he may revoke the same,

but his judgment shall be subject on appeal to the revision CHAP. 7.  
of a judge at chambers, who shall make such order in  
respect to the same as shall be agreeable to law and  
justice, and if he think fit may order any question of fact  
to be tried by a jury.

56. Every licensed mill owner who shall in all respects  
have complied with this Chapter shall be entitled to receive Commission to li-  
censed mill own-  
er. from the Commissioner of Mines, at the end or expiration  
of every three months from the date of his license, a sum  
equal to five per cent. upon the amount paid over by him as  
royalty during such period; but no such percentage shall Exception.  
be paid in the case of free leases.

57. A licensed mill owner may at any time surrender Mill license, how  
surrendered. his license by delivering the same into the office of the  
Commissioner of Mines, with a written surrender endorsed  
thereon; but no such surrender shall take effect till after  
the lapse of ten days from the filing at the office of the  
Commissioner of Mines of a notice in writing of the  
intention of such mill owner to surrender the same.

58. Upon such surrender taking effect as aforesaid Effect of surren-  
der. such mill shall cease to be a "licensed mill" until again  
licensed under the provisions of this Chapter.

59. The licensed mill owner so surrendering his license Construction of  
mill owner's bond and his sureties shall remain liable under their bond for all  
obligations accruing thereunder up to the time when the  
surrender takes effect as aforesaid, but shall not be liable  
for obligations accruing thereafter.

#### REQUIREMENTS OF LESSEES AND LICENSEES.

60. Lessees of mines shall be bound to make to the Lessees of mines  
to make quarter-  
ly returns. office of the Commissioner of Mines or to the Deputy  
Commissioner for the district within ten days after the  
first days of January, April, July and October in each year,  
true and correct returns to the best of their knowledge and  
belief, on forms to be supplied by the Commissioner of Mines,  
in which shall be comprised the following particulars:

I. The number of days' labor performed on the demised  
premises during the preceding quarter.

II. The number of tons of quartz or other gold or gold  
and silver bearing material raised from the demised  
premises during the preceding quarter.

III. The person or persons to whom the same has been  
sold or disposed of, and the different lots or parcels in which  
the same has been sold or disposed of, with dates.

IV. The weight of all quartz or other gold or gold and  
silver bearing material sent by him during the quarter to  
any licensed mill, and the name and description of the mill

CHAP. 7. to which the same has been sent ; and when the same has been sent and kept in distinct parcels the weight of each separate parcel.

V. The yield of each separate parcel or lot, as returned and allotted by the mill owner, with the date of allotment.

VI. The total quantity of gold or silver obtained from the mine in any manner during the quarter, distinguishing that resulting from the quartz or other gold or gold and silver bearing material crushed at licensed mills from the gold or gold and silver otherwise obtained.

Returns to be verified by affidavits. Such returns shall be verified by affidavits to be made before the Commissioner of Mines or one of the deputies or a justice of the peace.

Lessees liable for royalty. 61. The lessee and licensee of each mine shall be liable for royalty upon all gold or gold and silver obtained from his mine in any other way than from quartz or other gold or gold and silver bearing material crushed by licensed mills ; but he shall be exempt from any claim in respect of gold or gold and silver obtained from quartz or other gold or gold and silver bearing material so crushed, the liability of the mill owner for such royalty being substituted for that of the lessee.

Royalty repaid to owner of free mine. 62. When any parcel of quartz or other gold or gold and silver bearing material from a free mine shall have been crushed at a licensed mill, the owner of the quartz or other gold or gold and silver bearing material, on proof of the facts to the satisfaction of the Commissioner of Mines, shall be entitled to receive from the Commissioner of Mines the amount deducted by the licensed mill owner and paid as royalty under the provisions of this Chapter.

Lessee not paying royalty liable to action. 63. In case any holder of a lease granted under this Chapter shall fail to make payment of any royalty accruing under the terms of section 61 within ten days after the time prescribed by this Chapter for making his return to the Commissioner of Mines or the deputy commissioner for the district, he shall be liable to an action at the suit of the Commissioner of Mines, as for money had and received to his use for the value of the royalty so accruing.

Action may be brought in name of commissioner as for private deb 64. Such action may be brought, according to the amount claimed, before the same court which would have jurisdiction in case the amount claimed were an ordinary private debt ; and on a change of Commissioner of Mines actions prosecuted by him shall be continued and prosecuted by his successor in such manner as the court shall direct ; and a Commissioner may prosecute in his own name as for money had and received to his use, although the same shall have become due to a previous Commissioner.

## FORFEITURES.

## CHAP. 7.

65. In any case of liability to forfeiture of any gold or gold and silver mining lease for non-compliance by the lessee with the terms, stipulations and conditions therein contained or by this Chapter required, the Commissioner of Mines shall cause a notice in the form in Schedule E to be personally served upon the lessee (or some or one of the lessees, where more than one are included in the lease) or his agent or person principally employed on the premises, or shall cause such notice to be posted upon the premises leased where no person can be found in the gold district where such premises lie or (in case the leased premises are not within a proclaimed gold district) in the polling district in which such premises are situated upon whom to make service thereof, informing him of such charge and appointing a time (not less than thirty days after the service or posting of such notice) and place for the investigation of the same; and a duplicate of such notice shall also be posted up in the office of the Commissioner for at least thirty days next previous to the time so appointed; and such duplicate shall be kept so posted for at least thirty days after the investigation and decision of the case, with the decision and the date of such decision briefly noted thereon.

Lessee to receive thirty days' notice of intended forfeiture of lease

Duplicate notices where posted and how long.

66. At the time and place appointed the Commissioner shall proceed to investigate such case, and the service or posting of the notice shall be proved, either orally at the investigation or by affidavit sworn before a commissioner of the Supreme Court. Upon proof of such notice and upon hearing the evidence relating to the case, which shall be taken in writing and signed by the witnesses, the Commissioner, on being satisfied of the non-fulfilment of the conditions of the lease or of the provisions of this Chapter, shall give judgment forfeiting the lease and re-vesting the premises in the Crown: and such judgment shall be in the form of Schedule F, and shall be signed by the Commissioner.

Proceedings antecedent to forfeiture.

Judgment of forfeiture, form of.

67. From the judgment of the Commissioner of Mines the party interested may appeal to a judge at chambers, provided that notice of such appeal be given to the Commissioner of Mines within thirty days from the date of his decision; provided also that the party appealing shall, on applying for such appeal, make and file with the Commissioner of Mines an affidavit that he is dissatisfied with such judgment, and that he verily believes the lease has not been forfeited, and that the conditions in respect of which the forfeiture has been declared have really and truly been performed and fulfilled, and shall within the time limited for appeal enter into a bond with two sufficient sureties in

Appeal from commissioner to judge, how made.



CHAP. 7. the penalty of fifty dollars to enter and prosecute his appeal according to the provisions hereof, and pay all costs which may be adjudged against him by the court of appeal.

Decision of judge 68. On such appeal being perfected the Commissioner of Mines shall transmit to the Prothonotary at Halifax the notes of testimony taken before him; and the judge at chambers shall confirm or set aside the judgment, or make such order thereon as is agreeable to justice and in conformity with law.

He may refer questions of fact to a jury. 69. If the judge shall consider that the case involves questions of controverted fact on which he is of opinion that the verdict of a jury should pass, he may make an order for the trial of the questions of fact in the county where the land lies, in which case all the papers shall be transmitted to the prothonotary of that county; and the cause shall come on for trial in its place in the same way as ordinary appeals ordered to be tried by a jury.

Final judgment, effect of. 70. Upon the finding of the jury on the facts, the judge shall pronounce judgment on the whole case. So soon as judgment declaring forfeiture of the lease shall be given either by the Commissioner without appeal or by the court of appeal when the Commissioner's judgment is appealed from, the lessee and all persons holding under him shall thereafter cease to have any interest in the mine leased, and a minute of the judgment declaring forfeiture shall be registered in the office of the Commissioner of Mines on the expiration of the time limited for appeal in the same manner as prescribed by this Chapter for leases and transfers; and the leased premises shall then be open to be leased to any other applicant in the same way as if no lease thereof had ever passed; and pending the proceedings between the delivery of the first judgment and any subsequent judgment on appeal therefrom such lessee shall suspend all mining operations on the area alleged to be forfeited; otherwise he may at the discretion of the Commissioner be liable to be treated as a trespasser as hereinafter directed.

Commissioner has power to forfeit leases not worked or colorably worked for five years. 71. The Commissioner of Public Works and Mines shall have power to declare forfeited all leases granted for mining gold or gold and silver that are liable to forfeiture that have not been worked or have only been colorably worked for the space of five years next preceding, notice of such intended declaration first having been advertised for three weeks in two daily newspapers in the city of Halifax and in a newspaper if any there be in the county in which the area contained in such lease or leases lie, said advertisement to show the names of the lessees, the

Notice to be given.

number of the leases, and the date at which such declaration CHAP. 7.  
will be made.

72. No application for leases or prospecting licenses for No applications for forfeited areas received until final judgment.  
forfeited areas shall be received until the time limited for appeal has expired and all appeals are finally determined.

73. Whenever any areas which are or shall be under Sale of forfeited areas.  
lease for gold mining or for gold and silver mining shall be forfeited under the provisions of this Chapter, and whenever after investigation by the Commissioner of Public Works and Mines he is unable to decide who was the first applicant for a lease of said areas, the said Commissioner of Public Works and Mines may, after public notice to be given in such manner and for such length of time as may seem to him to be proper, cause the right to the lease of the said areas to be sold at auction in whole or in part, as he shall deem best for the public interests, and the person or persons who shall offer and pay the highest premium therefor at such sale shall be entitled to receive from the Commissioner a lease or leases of such area or areas as he or they may have purchased as aforesaid in preference to any other applicant or applicants.

#### UNLAWFUL ENTRY AND WORKING.

74. The Commissioner of Mines shall have power by Judgment of forfeiture, how enforced.  
warrant under his hand and seal, addressed to the sheriff or any constable of the county wherein the gold district lies, to cause any person unlawfully in possession of a mine so adjudged to be forfeited to be removed from the possession and occupation thereof; and upon receipt of such warrant the sheriff or constable to whom it is directed shall immediately execute the same.

75. Any person found mining in any land belonging Penalty for unauthorized mining.  
to the crown or to a private proprietor, the minerals in which belong to the crown, or entering thereon for the purpose of mining, shall be liable to a penalty for each offence of not less than ten dollars nor more than fifty dollars; but this section shall not extend to parties prospecting or searching for mines.

76. Parties violating the provisions of the preceding Each day a distinct offence.  
section shall be considered guilty of a distinct offence for every day they shall unlawfully mine.

77. On complaint in writing made to any justice of Mode of prosecuting for such mining.  
the peace of the county in respect of such unlawful mining or entry to mine, the justice shall issue his warrant to apprehend the offender and bring him before the justice to answer the complaint,—such justice shall thereupon forthwith enter upon the investigation of the complaint; and in case he shall find the party guilty, impose such

CHAP. 7. fines or penalties as the party may have incurred under the provisions of this Chapter. In case the defendant requires time for the production of witnesses for the defence, the justice shall adjourn the investigation for any period not exceeding six days on being satisfied by affidavit that such time is required for that purpose; and in such case the defendant shall be committed to gaol, unless he gives security to the satisfaction of the justice to appear at the time and place appointed for such adjourned investigation.

Appeal from the decision of justice of the peace.

78. The decision of such justice shall be subject to appeal as in ordinary cases; but before such appeal shall be allowed the appellant shall give a bond, with sufficient sureties in double the amount of the penalty and costs, to appear in the Supreme Court and obey the judgment thereof and pay such costs as the court may award.

Gold unlawfully mined to be personal property of the owner of mine.

79. Gold or gold and silver in quartz or otherwise, unlawfully mined on the property of any lessee of the crown shall be considered in law the personal property of the owner of the mine; and a search warrant may be issued for the same by any justice of the peace for the county in the same manner as for stolen goods; and upon the recovery of any gold or gold and silver under such warrant, the justice shall make such order for the restoration thereof to the proper owner as he shall consider right.

Nothing herein to affect existing remedies on part of Crown.

80. Nothing in this Chapter contained shall prevent Her Majesty from having or using any other remedy now available to recover possession of any mine forfeited from causes cognizable before the Commissioner of Mines, or from any other cause from which the same may be liable to forfeiture.

Appeal from Commissioner's decision as to application for license or lease.

81. Any party aggrieved by a decision of the Commissioner of Mines respecting any application for a prospecting license, or a lease of a gold area or gold and silver area, or a license to search, or a license to work, of any area other than a gold or gold and silver area, may appeal from such decision to the Supreme Court at the next term thereof at Halifax.

Manner and conditions of appeal.

82. Any party desiring to appeal from such decision shall give notice in writing to the Commissioner of his intention to appeal within twenty days after such decision, or within twenty days after such decision being made known to the party dissatisfied therewith, but always within one year from the date of such decision; and shall make and file with such notice an affidavit sworn to before a commissioner of the Supreme Court that he is dissatisfied with such judgment or decision, and that he verily believes he is entitled to the license or lease applied for, and shall also set forth therein the grounds of his appeal, and shall

within ten days thereafter enter into a bond with two sureties in the penalty of two hundred dollars to enter and prosecute his appeal according to the provisions of this Chapter, and pay all costs which may be adjudged against him by the court of appeal; and thereupon the Commissioner shall file such notice and affidavit, together with all papers and documents connected with such appeal with the prothonotary at Halifax on or before the first day of such term. CHAP. 7.

83. The provisions of the foregoing sections from 9 to 82, both included, shall apply exclusively to gold and to gold and silver mines; except where any of such sections are expressly mentioned to apply to mines other than gold and gold and silver mines, or where the provisions for such sections are extended to mines other than gold and gold and silver by the subsequent sections of this Chapter. Sections 9 to 82 both inclusive, to apply only to gold and silver mines.

#### OF MINES OTHER THAN GOLD MINES.

##### LICENSES TO SEARCH AND WORK.

84. The Commissioner of Mines may upon application grant licenses to search, to be in force for one year from the date of application therefor, to enter upon any lands in this Province not already applied for or under license or lease for mining purposes, and to dig and explore for such minerals other than gold or gold and silver as the crown holds for the benefit of the Province; a bond being first given to the Commissioner of Mines with sufficient sureties to the satisfaction of the Commissioner that in the event of entry being made upon private lands recompense shall be made for damages in the manner hereinafter provided. License to search, how granted.

85. No such application shall be valid unless accompanied by a payment of twenty dollars; and the license to search may cover any single tract of ground not exceeding five square miles in extent, but not more than two and a half miles in length. Fee.

86. Upon such application and payment being made the Commissioner of Mines where necessary shall cause the lands applied for to be surveyed and laid off, and a full description thereof shall be embodied in the license to search, but no such license shall authorize entry upon any lands which in accordance with section 44 of this Chapter are forbidden to be entered upon, except as in that section excepted. Area of license.

87. The cost of such survey shall be defrayed by the licensees or lessees, and the search for minerals under such licenses shall be made free of all expense to the Govern- Survey and description of lands, &c.

Survey, &c., to be at cost of licensee, who shall report to Commissioner.

**CHAP. 7.** ment; and the holder of the license shall within the time that the same shall be in force and with all convenient speed make a full and correct report of the result of his exploration to the Commissioner of Mines.

License, how renewed.

88. The said license to search may be renewed for a further period of twelve months on application therefor to the Commissioner of Mines, setting forth the special circumstances of the case, not less than thirty days before the expiration thereof, and on payment of the further sum of twenty dollars; subject however to the approval of the Governor-in-Council upon consideration of the special circumstances submitted.

Applications for second rights.

89. When a license to search for mines other than gold and silver has been applied for, it shall be lawful for the Commissioner of Mines to receive applications for other licenses to search (called second rights) over the same area; provided that he shall receive no more applications than there are areas of one square mile each contained within the area so first applied for, and on the expiration of the license to search granted under the first application, or on the selection of the one square mile thereunder, the license to search can be granted under the second application, and so on until the whole area is disposed of.

Damages ascertained as in case of gold mines.

90. If the proprietor of private lands entered under such license shall seek damages, the proceedings for ascertaining the amount of such damages and making payment of the same, shall be the same as provided for by this Chapter in the case of prospecting licenses for gold.

Licensee may select a square mile and apply for license to work.

91. The holder of a license to search may at any time before the expiration thereof select from the land covered by such license an area of one square mile, for the purpose of working the mines and minerals therein; and may make an application in writing to the Commissioner of Mines for a license to work the same, which application shall be accompanied by a payment of fifty dollars.

Fee.

Survey of square mile at cost of licensee.

92. Upon such application and payment being made, the Commissioner of Mines shall cause the portion so selected to be surveyed and laid off, and the applicant shall defray the expense of such survey, which said portion shall be in one block, the length of which shall not exceed two and a half miles; and the person making such survey shall make a full and accurate plan thereof, and transmit the same to the Commissioner.

Certain provisions as to private lands and forfeited areas applicable as in case of gold mines.

93. All the provisions herein contained relative to settlement by agreement or arbitration with the owner of the soil where the same is private land for damages done to his land, and to payment therefor, as set forth in sections 18 to 26 inclusive, and to the occupation of such lands as

set forth in section 29, and to the exemption of certain descriptions thereof from liability to be entered as specified in section 44, and to the vesting of interests forfeited under this Chapter, as specified in section 33, shall be applicable and in force in the case of mines other than gold or gold and silver mines, equally as in gold or gold and silver mines. CHAP. 7.

94. Upon complying with the requirements of this Chapter the applicant shall be entitled to a license to work the one square mile applied for; the bond given for the license to search, under which the license to work was obtained, remaining in full force and virtue. Granting li-  
cense to work.

95. Every license to work shall be for a term of two years from the date of application, and shall be extended to three years upon the additional payment by the holder of the license of one half of the amount originally paid for such license; and within such term the holder of the license shall commence effective and not colorable mining operations, and shall continue the same in good faith until the termination of such term; and in case the same person shall hold licenses to work over several adjoining areas, and shall have commenced effective mining operations on one of his areas, the Commissioner of Mines may, if it be shown to his satisfaction that the area so opened is by reason of a deficiency of mineral or other natural cause insufficient for effective working, allow one of the adjoining areas to be combined with it, and the two so combined to be considered as one area with respect to the commencement and continuation of effective mining operations. License to work  
to cover two  
years from appli-  
cation and re-  
newable for one  
year.

96. Any party may apply for a license to work without having previously obtained or applied for a license to search, and in such case his application shall embody a description of the area applied for; and upon complying with all the antecedent conditions hereinbefore set forth, except those which relate solely to licenses to search, and a bond being given to the Commissioner of Mines as for a license to search, he shall be entitled to such license to work. License to work  
in first instance,  
how granted.

97. The holder of a license to work or those representing him, having complied with the terms of the preceding sections, shall on or before the termination of his license be entitled to a lease of the premises described therein, which lease shall contain all the ordinary provisions of mining leases, with such conditions as the Governor-in-Council may think necessary to ensure the effective and safe working of the mines on such premises. Lease, how grant-  
able to holder of  
license to work.

#### LEASES.

98. No lease shall be issued unless it shall have been shewn to the satisfaction of the Commissioner that the conditions relative to commencement and continuance of No lease issued  
unless certain  
conditions com-  
plied with.

CHAP. 7. effective mining operations in the license to work have been fully complied with.

Leases executed in same manner as gold leases.

99. Leases of mines other than gold mines or gold and silver mines granted under the provisions of this Chapter shall be executed by the Commissioner and the lessee in the same manner as provided in section 17 of this Chapter for leases of gold mines.

Renewals not to extend beyond sixty years.

(a.) Leases of mines other than gold or gold and silver mines shall be for the term of twenty years, and shall contain all the conditions, provisions, provisos and reservations usually contained in such leases or that may be required for the safe and proper working of the mines, or that may be required by an order of the Governor-in-Council, or by this Chapter or any act hereafter passed by the Legislature of this Province; and such leases may be renewed on the same terms and conditions as are hereinafter provided, but such renewals shall not extend or be construed to extend to a period beyond eighty years from the date of the lease.

In future leases barrier ten yards in width reserved around areas.

(b.) In the granting of leases hereafter there shall be reserved as a barrier a space of ten yards in width running all around the area leased, which barrier shall not be opened or mined except by the consent of the owner of the adjoining area and by the order of the Governor-in-Council; and in case of a mine in lands covered with water the barrier or reservation as above shall be twenty-five yards in width, and shall not be opened or mined unless by the consent of the owner of the adjoining area, and by the order of the Governor-in-Council.

Under water, twenty-five yards.

(c.) A lessee of a coal mine granted under this Chapter or any act passed by the Legislature of this Province shall not at any time during the term of his lease, or any renewal thereof, assign, transfer, set over or otherwise part with the premises granted or any part thereof, or such term or any portion thereof to any person whomsoever, without the license, consent or approbation of the Governor-in-Council first had and obtained for the purpose, and signified under the hand and seal of the Commissioner of Mines.

Coal lease not transferred without consent of Governor-in-Council.

Ratification by Governor-in-Council equivalent to license, &c, first obtained.

(d.) The ratification by the Governor-in-Council, signified under the hand and seal of the Commissioners of Mines, shall be equivalent in all cases to the license, consent and approbation of the Governor-in-Council first had and obtained for the purpose under sub-section (c.), and any assignment or transfer which has been so ratified or may hereafter be ratified is and shall be of the same force and effect as if such license and consent and approbation had been given before such transfer.

(e.) Any lease may at any time be surrendered by the lessee in the same manner and upon terms similar to those hereinbefore prescribed for the surrender of a gold or gold and silver mining lease. CHAP. 7.  
Surrender of  
lease same as of  
gold lease.

100. The Governor-in-Council may by special order authorize the granting a lease of a larger area than one square mile if on investigation of the special circumstances of the case it is shewn that by reason of a deficiency of mineral or other natural causes an area of one square mile was insufficient to make a profitable mine (but in no case to exceed two square miles), and in such case may impose such further conditions, not at variance with the spirit of this Chapter, as may be deemed just, and in like manner and on the same conditions two leases of one square mile each may be held and treated as one lease. Special cases,  
larger area than  
one square mile  
granted.

101. All leases of copper and lead mines which have been or may be issued under this Chapter or any act passed by the Legislature of this Province shall be held and construed to convey to the lessee or lessees therein named and his or their assigns all ores and metals held in composition, associated with or contained in the copper or lead ores therein conveyed, and the same shall be subject to the same royalties as are hereinafter provided for such ores and metals. Leases of copper  
and lead mines,  
how construed.

#### CORNER POSTS.

102. All lessees of mining areas other than gold or gold and silver mining areas shall within six months after the issuing of such leases, place or cause to be placed at each and every corner of the areas contained in their respective leases a post or monument of stone or other durable material, of such size, nature and character as the Commissioner may determine. Lessee to place  
corner posts or  
monuments.

(a.) Each post or monument shall have distinguishing letters or a suitable inscription cut or marked thereon, designating the corner where placed. Provided always that in cases of areas any corners of which are covered with water, or where the placing of such posts or monuments at such corners would cause private or public inconvenience, it shall be lawful and requisite for the lessees, with the consent of the Commissioner, to place such posts or monuments on the land adjoining such corners, in such positions as shall be approved by the Commissioner. Marks on posts  
or monuments.  
  
Proviso as to sub-  
marine areas.

(b.) The area of each lease shall be defined as herein required according to the priority of the granting of such lease; and the lessee of the area first leased shall give to the lessees of the adjoining areas or their agents a written notice that on a day named—to be not less than ten days after the service of such notice—a survey will be made for Manner of plac-  
ing posts, &c.,  
notices and sur-  
vey.



**CHAP. 7.** the purpose of establishing the boundaries of the area and placing the posts or monuments required by this Chapter. Such survey shall be made by a sworn surveyor, whose appointment shall be sanctioned by the Commissioner ; and such surveyor shall make a return of such survey with an accurate plan thereof to the Commissioner.

After forty days boundaries confirmed.

(c.) If within forty days after such return has been made by the surveyor to the Commissioner no complaint be made to the Commissioner that the boundary lines of the area as so defined are not in accordance with the lines as originally defined, the boundary lines of the area as so defined by the surveyor shall, as between the lessees, be held to be the true and correct boundary lines of the area.

If boundaries not established Commissioner may cause area to be defined.

(d.) If within the year above mentioned, from disagreement or otherwise, such boundary lines are not established and defined as required by this Chapter, the Commissioner may cause a survey to be made and the area to be defined as hereinbefore required ; and the boundaries so established shall be held to be finally determined.

Expenses, by whom paid, how recovered in certain cases.

(e.) The expenses of all such surveys and of the placing or erection of all such posts or monuments as required by this Chapter, shall be paid by the lessees of the areas defined ; and, where such surveys are made and such posts or monuments are established by virtue of the next preceding section, such expenses may be sued for and recovered from the lessees in the name of the Commissioner, as an ordinary debt of like amount.

Monuments, by whom, when and how placed.

(f.) Each monument or post, as often as it shall be destroyed or removed, shall be replaced by the lessee at his own expense within one month ; and the proceedings therefor shall be the same as hereinbefore required for the original definition of the area.

Damage paid to owner of land.

(g.) Where the lessee is not the owner of the land included in the area leased, and on which the boundary posts or monuments are required to be placed, he shall be at liberty to set them up on such land, but shall pay the proprietor for the damage caused thereby.

Proceedings where proprietor and lessee cannot agree.

(h.) If the proprietor and the lessee cannot agree on the amount of such damages, the lessee may call on any three disinterested justices of the peace for the county in which the area is to appraise the same. The justices so called upon shall forthwith appraise such damages ; and their award or that of any two of them shall be final.

Pay and travelling fees of justices of the peace for making appraisement.

(i.) Each of such justices of the peace shall be entitled to one dollar a day for the time actually and necessarily employed in making such appraisement, besides travelling fees at the rate of two cents per mile to be computed from the residence of the justice to the place where the appraise-

ment is made; such pay and travelling fees to be paid by CHAP. 7.  
the lessee.

(j.) Any lessee neglecting to set up such posts or monuments or to renew or replace the same when removed or destroyed, as required by this Chapter, shall forfeit a sum not exceeding one hundred dollars for every such post or monument he shall neglect to set up or replace. Penalty for neglecting to set up posts, &c.

(k.) Any person wilfully destroying, defacing, injuring or removing any such post or monument, or attempting so to do, shall forfeit a sum not exceeding one hundred dollars for each offence. Penalty for destroying monuments, &c.

(l.) Any penalty under this Chapter shall be recovered in the name of the Commissioner, before two justices of the peace for the county wherein the offence is committed, in the same manner as an ordinary debt. Penalties, where and how recovered.

#### QUARTERLY RETURNS.

103. On or before the tenth day of each of the months of January, April, July and October in each and every year, the owner, agent, or manager of every mine (other than a gold or gold and silver mine) leased from the Crown, shall send to the Commissioner a correct return specifying the quantity of coal, iron, ore, or other mineral wrought or gotten in such mine, the probable use and destination of the same, and the amount of royalty which has accrued upon such material extracted during the last previous quarter; and on or before the last days of January, April, July and October in each year, a correct return specifying the number of days' labor and the number of persons ordinarily employed in or about such mine below ground and above ground, and the different classes of the persons so employed, and the cost and description of all the shafts, quarries, slopes, levels, planes, works, machinery, tramways and railways, sunk, driven, opened or constructed during the preceding quarter. Quarterly returns of mines, when and how made, and how verified.

Such returns shall be sworn to by the agent or manager and by one or more credible persons principally employed in or about the working and management of such mine, before the Commissioner or a justice of the peace. Before whom sworn.

#### ROYALTIES.

104. All ores and minerals (other than gold or gold and silver) mined, wrought, or gotten under authority of licenses or leases granted under the provisions of this Chapter or of any act heretofore passed by the Legislature of this Province, shall be subject to the following royalties to the Crown for the use of the Province, that is to say :

## CHAP. 7.

*Coal*—Nine cents and seven-tenths of a cent on every ton of two thousand two hundred and forty pounds of coal, except:

(a.) Slack coal, that is, coal that shall have passed through a screen the bars of which are not wider apart than three-quarters of an inch;

(b.) Coal used for domestic purposes by the workmen employed in and about the mine; and

(c.) Coal used in mining operations in and about the mine from which such coal has been gotten;

Proviso.

And provided that, where there shall have been mined, wrought or gotten in any one year over and above two hundred and fifty thousand tons for each square mile contained in the license or lease, besides the coal so excepted from royalty, each ton so mined above the two hundred and fifty thousand tons shall be subject to a royalty of six cents and forty-eight hundredths of a cent only.

*Copper*—Four cents upon every unit, that is, upon every one per cent of copper contained in each and every ton of two thousand three hundred and fifty-two pounds of copper ore sold or smelted.

*Lead*—Two cents upon every unit, that is upon every one per cent. of lead contained in each and every ton of two thousand three hundred and fifty-two pounds of lead ore sold or smelted.

*Iron*—Five cents on every ton of two thousand two hundred and forty pounds of ore sold or smelted.

*Tin and precious stones*—Five per cent. on their value.

## RENEWALS.

Coal leases, how renewable.

105. The General Mining Association "Limited" and other lessees of mines other than gold or gold and silver mines in this Province, their executors, administrators and assigns shall, upon giving notice in writing to the Commissioner of Mines at least six months previous to the expiration of their leases, respectively, of their intention to renew such leases, respectively, for a further period of twenty years from the expiration thereof, be entitled to a renewal thereof for such extended term upon the same terms, conditions and covenants as contained in the original lease or as prescribed by this Chapter or by any Act that may be passed by the Legislature of this Province, and in like manner upon giving a like notice before the expiration of such renewal term, to a second renewal and extension of term of twenty years from and after the expiration of such renewal term, and in like manner upon giving like notice before the expiration of such second renewal term, to a third renewal and extension of twenty years from

and after the expiration of such second renewed term, CHAP. 7.  
 provided that at the time of giving such notices, and the  
 expiration of such terms, respectively, the said lessees, their  
 executors, administrators and assigns, are and shall continue  
 to be *bonâ fide* working the areas comprised within their  
 respective leases, and complying with the terms, covenants  
 and stipulations in their respective leases contained within  
 the true intent and meaning of section 107 of this Chapter ;  
 and provided that in no case shall such renewal or renewals  
 extend, or be construed to extend, to a period beyond eighty  
 years from the date of the original lease, but the renewed  
 lease shall not include in respect of each mine worked a  
 larger area than five square miles.

Limitation.

(a) In case the workings of a colliery extend under  
 ground covered by two or more leases the Commissioner  
 may renew such leases, on it being satisfactorily proven to  
 the Commissioner that the ground covered by said leases  
 is necessary to the satisfactory and profitable working of  
 said mine.

Colliery extend-  
ing underground  
covered by two  
or more leases.

(b) In case the workings of one area have been  
 extended into an adjoining area even if there is now no  
 coal being mined in the first area, both leases may be  
 renewed in whole or in part as may be decided by the  
 Commissioner on the special circumstances of the case.

Workings of one  
area extended in-  
to an adjoining  
area.

(c) In the case of works being prosecuted outside of  
 an area for the purpose of winning the coal in said area,  
 the lease of said area may be renewed on it being satis-  
 factorily shown to the Commissioner that said works are  
 being continuously and effectively prosecuted.

Works prosecu-  
ted out of an  
area for the pur-  
pose of winning  
coal.

(d) In the case of an unworked area adjoining a mine  
 being worked, the works of which would be a natural  
 outlet of said unworked area, and that it was necessary to  
 the profitable working of the mine, the lease of said area  
 may be renewed on it being shown to the Commissioner  
 that said workings would be a natural outlet for the  
 product of said unworked area, and that said unworked  
 area was necessary to the profitable working of the mine.

Unworked area  
adjoining a mine  
being worked.

(e) In the case of leases that are eligible for renewal  
 in which the conditions of renewal embodied therein are  
 different from those prescribed by this Chapter, and the  
 lessees thereof are unwilling to have such conditions  
 altered, the Commissioner shall have power to renew said  
 leases on the terms contained therein and as prescribed by  
 Chapter 9 Revised Statutes, Fourth Series, and no other.

Conditions of re-  
newal of lease  
different from  
those in this  
Chapter.

#### SURRENDER.

106. The holder of any lease may at any time sur-  
 render the same by notice in writing, signed by him and  
 filed, together with his counterpart of lease, in the office

Surrender to be  
by notice in  
writing.

**CHAP. 7.** of the Commissioner; but in case the counterpart of the lease has been lost or cannot be obtained, an affidavit to that effect made by the lessee will be received in place of such counterpart; but nothing herein contained shall be construed to discharge him from liability in respect of any covenants in the lease, for or in respect of any act, matter or thing, for which at the date of such surrender he was liable under the terms of such lease.

**FORFEITURE.**

**107.** Where it shall be represented to or come to the knowledge of the Commissioner of Mines that any mines or minerals claimed under a lease from the Crown, or under a lease granted pursuant to this Chapter, have been abandoned for the space of one year, have not been effectively and continuously worked, or have been worked only colorably, or to prevent a forfeiture under the terms of such lease, the Commissioner of Mines shall cause a notice, to the effect of the form of Schedule E, to be personally served upon the lessee, or some or one of the lessees where more than one of them are included in the same lease, or his or their agent or person principally employed on the premises, or shall cause such notice to be posted up upon the premises leased where no person can be found upon whom to make service thereof, informing him of such charge and appointing a time, to be not less than twelve months after the service or posting up of such notice, and also a place for the investigation thereof. At the time and place appointed the Commissioner of Mines shall proceed to investigate such case and decide thereon, and shall thereupon give notice of his decision to the lessee or his agent by causing such notice to be served or posted up, as in this section above directed; and if, within such term of twelve months, the lessee or his assignee shall and do commence and prosecute effective mining operations to the satisfaction of the Commissioner of Public Works and Mines, according to the true intent and meaning of the terms, covenants and stipulations in the lease contained, and of this section, such mining areas so leased shall not be forfeited.

**108.** No mere colorable working shall prevent a forfeiture; and the Commissioner aforesaid shall have power to examine witnesses on oath, and receive all other necessary testimony, in respect of the mining operations; and if the decision shall be that such operations are not effective but merely colorable, the mine or mines shall be declared forfeited, and notice of the decision shall be given in accordance with the provision in section 107.

109. The decision of such Commissioner shall be in the CHAP. 7.  
 form in Schedule F; and the lessee or assignee may appeal Form of deci-  
 to the Supreme Court or a judge thereof at chambers, sion.  
 against such decision; any party desiring to appeal from Manner and con-  
 such decision shall give notice in writing to the Commis- ditions of appeal.  
 sioner of his intention to appeal within twenty days after  
 such decision, or within twenty days after such decision  
 being made known to the party dissatisfied therewith, but  
 always within one year from the date of such decision; and  
 shall make and file with such notice an affidavit, sworn to  
 before a commissioner of the Supreme Court, that he is  
 dissatisfied with such judgment or decision, and that he  
 verily believes the lease should not have been forfeited, and  
 shall also set forth therein the grounds of his appeal, and  
 shall within ten days thereafter enter into a bond with two  
 sureties, in the penalty of six hundred dollars, to enter and  
 prosecute his appeal, according to the provisions of this  
 Chapter, and pay all costs which may be adjudged against  
 him by the court of appeal; and thereupon the Commis-  
 sioner shall file such notice and affidavit, together with all  
 papers and documents connected with such appeal, with the  
 prothonotary at Halifax, on or before the first day of such  
 term.

110. Where notices are to be posted on the premises Notices, how  
 under this Chapter, or any of the sections hereof, and the posted when  
 areas in respect of which the notices are to be posted shall areas under  
 be covered with water, the notices may be posted on the water.  
 land as near as conveniently may be to the areas so covered  
 with water.

111. Whenever a lease of a mine other than of gold Forfeited mine  
 or gold and silver, shall become forfeited under this Chapter; may be relet on  
 the Governor-in-Council may direct such additional terms conditions de-  
 to those prescribed hereby, on which such mine shall be termined by Gov-  
 relet or regranted by the Commissioner. ernor-in-Council

112. There shall be kept in the office of the Commis- Mining maps of  
 sioner of Mines maps of the different mining districts in Province and  
 the Province, on which shall be delineated as accurately as register to be kept  
 may be all the areas under license or lease as mines other in Commis-  
 than gold or gold and silver mines; and also a book or sioner's office.  
 books of registry in which shall be registered all the  
 licenses and leases of such areas, and such maps and  
 book or books shall be open to the inspection of the  
 public.

113. The provisions of the foregoing sections, from 84  
 to 112 both inclusive, shall apply only to mines other than Sections 84 to  
 gold and gold and silver mines. 112, both inclu-  
sive, to wha;  
mines applicable

## CHAP. 7.

## MISCELLANEOUS.

Commissioner may lease Crown Lands in mining districts, &c., reserving rights of mining leases under certain conditions, &c.

114. The Commissioner of Mines may lease Crown Lands, being within the limits of any proclaimed gold district or comprising any tract within which the mines and minerals other than gold or gold and silver are under license or lease, for purposes other than mining, reserving always the rights of present or future lessees of mining areas therein, and subject to such other reservations and for such terms and upon such conditions as the Governor-in-Council may direct; and may also sell any timber not previously disposed of, growing or being upon any part of the Crown domain included within any such gold district, or other tract under license or lease for mines or minerals other than gold or gold and silver, upon such terms as the Governor-in-Council shall authorize and direct.

No mining lease void because not recorded in registry of deeds.

115. No lease granted under the provisions of this Chapter shall be void against any subsequent purchaser, mortgagee for valuable consideration, or judgment creditor, by reason of such lease not having been previously registered in accordance with the provisions of the Chapter of the Revised Statutes, "Of the Registry of Deeds and Encumbrances affecting Lands."

Governor-in-Council may proclaim gold districts.

116. The Governor-in-Council may at any time by proclamation as in this Chapter provided, declare a gold district which shall contain an area or areas under license or lease for the purpose of searching for or working mines and minerals other than gold or gold and silver; and in such case the areas under such license or lease shall, notwithstanding such license or lease, become subject to all the provisions of this Chapter which relate specially to all gold districts and gold and gold and silver mines, under such regulations as the Governor-in-Council shall make.

Governor-in-Council may make mining regulations not inconsistent with law.

117. The Governor-in-Council is authorized to make rules and regulations relative to gold districts and gold or gold and silver mines and mines other than gold or gold and silver mines, and licensing and leasing the same, and to the pumping, draining, ventilation, working, management, care, possession and disposal of the same, and to all other matters connected with the same; and to make such rules and regulations general or applicable only to particular districts or localities as may be deemed best; and all such rules and regulations when published in the *Royal Gazette* shall have the force of law until annulled by the Governor-in-Council; provided such rules and regulations shall not be repugnant to the laws of the Province or the provisions of this Chapter; and such rules and regulations may in

like manner be altered, modified or cancelled, as circumstances shall require. CHAP. 7.

118. The forms to be used under this Chapter shall be substantially the same as those heretofore in use, subject however to such amendments and alterations as the Governor-in-Council may from time to time make or direct. Existing forms continued.

119. Any lessee or licensee of mining areas lying beneath the waters of the sea may make or cause to be made tunnels from the adjacent land above high water mark, under the waters, to such mining areas, doing as little damage as possible to the owners or lessees of the land in which such tunnels shall be made, and the intervening land covered with water, and the mines therein contained. Lessee or licensee of submarine areas may tunnel from adjacent lands.

120. The damages of such tunneling shall be agreed for, determined, settled and paid, as directed in this Chapter from section 18 to section 26 inclusive, and also section 93. Damages how assessed.

121. If the lessee or licensee of such mining areas cannot agree with the owner or owners of the land, or the lessee or licensee of the mining areas through which it is necessary to drive such tunnels, the Commissioner of Public Works and Mines, subject to the approval of the Governor-in-Council, shall determine where such tunnels shall be made or commenced, the number of such tunnels, the size, width and depth thereof, the quantity of land to be taken and occupied for the same, and the course and direction which such tunnels are to take through the intervening land covered with water, and the mines therein contained; and he shall cause a plan thereof to be made and filed in the office of the Registrar of Deeds for the county where the lands so taken for the commencement of the tunnels shall be situated. In case of disagreement Commissioner shall determine location, size, &c., of tunnels. Plan.

122. Leases of mining areas shall be issued in duplicate; and such leases shall be registered in the office of the Commissioner of Mines by the Commissioner or some person by him thereto authorized. Mining leases in duplicate. Registered in mines office.

123. A certificate of such registry with the day and year thereof, shall be endorsed on the duplicate delivered to the lessee. Certificate of registry.

124. All leases which have been passed prior to the passage of this Chapter, that are not void or forfeited, shall be registered and certified as above, if not already so registered. Certain existing leases to be registered.

125. In case of a lease or license where there are more than one lessee, a declaration in duplicate may be made and Declaration of interest in case of several lessees.



CHAP. 7. signed under seal by all the lessees, or their heirs and assigns, stating the proportion owned by each lessee.

Proved and registered.

126. Such declaration shall be duly proved on oath, before any justice of the peace or the Commissioner of Mines, and registered as hereinbefore mentioned.

All transfers of interest in mines to be registered and certified.

127. All transfers of any interest in mining leases hereafter to be made shall be registered as aforesaid; and a certificate of such registry shall be endorsed on every such transfer as in the case of mining leases; and such registry and certificate shall be conclusive evidence of the transfer of such mining interests.

Forms.

128. The forms of declaration and transfer for the purposes of this Chapter shall be as in Schedules B and C respectively.

Incorporated company to file copy of charter, &c.

129. Every company now or hereafter incorporated under any act of this Legislature, or by any other competent authority, holding or working mines under this Chapter shall file a copy of their charter or act of incorporation and by-laws or regulations in the office of the Commissioner of Mines before any such company shall commence work, together with a list of the officers of such company, and all changes of officers made shall also be certified to the office of the Commissioner of Mines; and until such certificate is filed no such new official need be recognized by the Commissioner of Mines as an official of any such company.

Description of mortgages, &c. to be registered in Commissioner's office.

130. A description of all mortgages, bills of sale, attachments, judgments, transfers and documents of title of any kind (except licenses), relating to or in any way affecting the title of gold or gold and silver, coal or other mines shall be recorded according to Schedule D. in the office of the Commissioner of Mines; and all licenses and a description of all mortgages, bills of sale, attachments, judgments, transfers and documents of title of any kind affecting such licenses shall be registered in the book of application for mining rights in the office of the Commissioner in the same manner as such licenses and descriptions are now registered; and any such mortgage, bill of sale, attachment, judgment, transfer or document of title shall be void as against any subsequent *bonâ fide* mortgage, bill of sale, attachment, judgment, transfer or document of title which shall be previously registered.

Duplicate or certified copy to be filed.

131. A duplicate or true copy, certified by a notary under his seal, of every transfer, mortgage or other conveyance, registered as above, shall be filed in the office of the Commissioner of Mines before a certificate of registry is given.

132. If the applicant for a mining lease shall not execute such lease and file it in the office of the Commissioner for execution and registry by the Commissioner within one year from the time of his application, the areas shall be considered vacant, and applications for a lease or license may be received.

CHAP. 7.

If lease not executed and filed within a year areas deemed vacant.

133. The Commissioner shall have power to cause witnesses brought before him in all contested cases or matters which he has power to investigate and decide to be examined under oath, which oath the Commissioner is hereby empowered to administer, and like powers are hereby conferred on Deputy Commissioners in all contested cases and matters before them which they have power to investigate and decide ; and the Commissioner and Deputy Commissioners shall have power to take affidavits under oath and to administer the oath in all such cases, and to administer oaths in all cases where affidavits are required by this Chapter, except where such oath is required to be administered by a commissioner of the Supreme Court. The Chief Commissioner or any Deputy Commissioner shall not receive any application for license or lease of any mines or mining areas, the right to a license or lease of which is at the time of such application in dispute before the Commissioner or Deputy or any court of appeal.

Commissioner and deputies may swear witnesses.

No application to be received for mining rights in dispute.

134. Where royalties are due and owing to the Crown, the Governor-in-Council shall have power to order the Commissioner of Mines to issue a warrant under his hand and seal of office directed to the Sheriff of the county where the mine in respect of which such royalties are due is situated, requiring such Sheriff immediately on receipt thereof to levy on the goods and chattels used in working and operating such mine ; and if within the space of twenty days next after such levy such royalties so due are not paid to such sheriff to proceed to sell the same or so much of such goods and chattels as shall be sufficient to pay such royalties and his fees, first having publicly advertised the same for the space of not less than ten days before such sale, and to make return of such warrant and pay over the sum due for such royalties to the Commissioner of Mines within thirty days from the issuing thereof. Upon the receipt of such order the Commissioner shall issue such warrant and deliver the same to such sheriff, who shall immediately execute the same according to the exigencies thereof, and the sheriff's fees on such execution shall be the same as for executing a writ of execution out of the Supreme Court in a civil suit.

Royalties how collectable where unpaid.

## CHAP. 7.

On what days  
leases shall ter-  
minate.

New leases  
grantable next  
day.

Change of owner-  
ship of mining  
leases in certain  
cases to be au-  
thenticated by  
declaration.

Evidence to se-  
company such  
declaration.

Commissioner to  
register names of  
new owner.

Alternative title  
of chapter al-  
lowed.

135. Leases and licenses shall terminate on the recurrence of the day on which they bear date in the year of their termination, and after ten of the clock of the forenoon of the following day the areas may be leased or licensed anew; but nothing contained in this section shall prevent the renewal and extending of licenses and leases as hereinbefore provided.

136. If any lease or any share or interest therein becomes transmitted or transferred in consequence of the death, bankruptcy or insolvency of any lessee, or in consequence of the marriage of any female lessee, or by any means other than a transfer according to the provisions of this Chapter, such transmission or transfer shall be authenticated by a declaration of the person to whom such lease or share or interest therein has been transmitted or transferred, stating the circumstances of such transmission or transfer, and describing the manner in which and the person to whom such property has been transmitted or transferred; and such declaration shall be made before the Commissioner, Deputy Commissioner of Public Works and Mines, or a justice of the peace.

137. If such transmission or transfer shall have taken place by virtue of the bankruptcy or insolvency of any lessee, such declaration shall be accompanied by such evidence as may for the time being be receivable in courts of justice as proof of the title of persons claiming under any bankruptcy or insolvency; and if such transmission has taken place by virtue of the marriage of a female lessee, such declaration shall be accompanied by a copy of the register of such marriage or other legal evidence of the celebration thereof, and shall declare the identity of such female lessee; and if such transmission shall have taken place by virtue of any testamentary instrument or by intestacy, then such declaration shall be accompanied by the probate of the will or the letters of administration or any copy thereof that may be legal evidence or would be received in courts of justice as proof of such transmission.

138. The Commissioner of Mines, upon the receipt of such declaration so accompanied as aforesaid, shall enter the name of the person entitled to the lease or any share or interest therein, under such transmission or transfer, in the books of registry as so entitled thereto.

139. This Chapter may be legally known and cited as "An Act to Consolidate the Statutes relating to Mines and Minerals," when necessary, as well as by its regular title.

## SCHEDULES.

## A.

THIS INDENTURE, Made this —— day of —— in the year of our Lord One Thousand Eight Hundred and —— between the Queen's Most Excellent Majesty, of the one part, and —— hereinafter described as lessees, of the other part :

Witnesseth, That in consideration of the royalties hereby reserved, and of the covenants and agreements herein contained, and on the part and behalf of the said lessees, their executors, administrators and assigns, to be observed and performed, our Sovereign Lady the Queen, of her special grace, certain knowledge and mere motion, doth grant and demise unto the said lessees, their executors, administrators and assigns, all that certain tract of land, situate at —— gold district in the county of —— known and described as follows, that is to say :

An area, composed of —— area of class number one, and numbered on the plan of said gold district, signed by the Commissioner of Public Works and Mines, and filed in his office, as by reference to the same will appear.

And also, all and singular the beds, veins and seams of gold and silver, gold-bearing and silver-bearing quartz, and other gold-bearing rocks and silver-bearing rocks and minerals, and gold-bearing and silver-bearing earth, and all the gold and silver, whether in quartz, grain or otherwise, in, situate, and being within the limits of the said tract, and within, under or upon the same. Provided always, and it is the true intent and meaning of these presents and of the parties hereto, that nothing herein contained shall in any manner interfere with any of the rights of the owner or owners of the land in which such area situated, but the said rights are reserved unto the said owner or owners, their heirs and assigns, and it is further agreed and understood that the said lessees shall not enter into the said area without the special leave and license of the owner or owners thereof unless the said lessees shall have taken proceedings in accordance with Chapter 7 of the Revised Statutes "Of Mines and Minerals."

To Have and to Hold the said tract of land, and the said beds, veins and seams of gold and silver, and gold-bearing and silver-bearing quartz, and all other the gold-bearing rocks and silver-bearing rocks and minerals, and gold-bearing and silver-bearing earth, and gold and silver whether in quartz or otherwise, in, under, and upon the same, to the said lessees, their executors, administrators

CHAP. 7. and assigns, for, during and unto the full end and term of twenty-one years, to commence and be computed from the \_\_\_\_\_ day of \_\_\_\_\_ and fully to be complete and ended :  
Yielding and rendering unto our Sovereign Lady the Queen, her heirs and successors, quarterly and every quarter upon the first days of January, April, July and October, in each and every year during the continuance of this demise, at the office of the Commissioner of Public Works and Mines at Halifax, or of the Deputy Commissioner of Mines for the district, a royalty of two per cent. upon the gross amount of gold and silver obtained, mined, had, wrought, or gotten from or out of the said demised premises, or out of any quartz, slate, rock, mineral, or earth mined, obtained, had or gotten out of the same in any other way than from quartz or other material crushed by licensed mills, at the rate of nineteen dollars per ounce, troy, for smelted gold, and eighteen dollars for unsmelted gold, and at the rate of one dollar per ounce, troy, for silver 900 fine.

And the said Lessees do hereby covenant, promise and agree to and with our said Sovereign Lady the Queen, her heirs and successors, that the said Lessees, their executors, administrators, and assigns, shall and will well and truly pay and deliver, or cause to be paid and delivered to our Sovereign Lady the Queen, her heirs and successors, at the times and places and in the manner aforesaid, the said royalty hereby reserved under the terms and provisions of this lease.

And also, That the said Lessees, their heirs, executors, administrators and assigns shall and will during the continuance of this demise keep or cause to be kept one or more book or books of account, wherein true entries shall be made of all such gold and gold-bearing quartz, silver and silver-bearing quartz and minerals, and other rock containing gold or silver, and all gold or silver in grain or otherwise as shall from time to time be mined, wrought, had, gotten or obtained out of the said demised premises, and also of the names of the men actually employed in the working of the said demised premises, and the number of days' labor performed by such men, with the respective dates thereof; and also the names of the person or persons to whom any quartz or gold-bearing or silver-bearing earth or other gold-bearing or silver-bearing material raised from the demised premises has been sold or disposed of, with the price or the percentage upon the yield thereof received therefor, and also the weight of any quartz, or other gold-bearing or silver-bearing material raised from the demised premises, which may be sent to any licensed mills for crushing quartz, the name and description of the mill to which the same has been

sent, and also the yield of gold and silver from such quartz CHAP. 7.  
or other materials as returned by the mill owner; and also that such book or books of account shall at all times be open and subject to the inspection and examination of the Commissioner of Public Works and Mines, or of the Deputy Commissioner of the district, or of the Inspector of mines, and also of any other person or persons thereto specially appointed by the Commissioner of Public Works and Mines for the time being; and also that the said lessees, their executors, administrators or assigns, shall upon the first days of January, April, July and October in each and every year during the continuance of this demise, deliver or cause to be delivered to the Commissioner of Public Works and Mines at Halifax, or to the Deputy Commissioner of Mines for the district, a true and correct return on forms to be supplied by the Commissioner, which shall show the particulars prescribed and required by the sixtieth section of Chapter 7 of the Revised Statutes "Of Mines and Minerals," verified by an affidavit of some one or more suitable person or persons employed in or about the working or management of the mines hereby granted and demised, made before the Commissioner of Mines, or a deputy, or before a justice of the peace, and shall in all respects obey, abide by, perform and fulfil all the requirements of the said Chapter.

And likewise, That the said lessees shall annually cause to be employed on the demised premises so many men as shall make the whole labor performed thereon during the year in opening and working the said mines amount in all to the number of \_\_\_\_\_ days' labor; and also shall and will, during the continuance of this grant or demise, work the said mines in a good and workmanlike manner, and shall and will from time to time, and at all times during the continuance of this grant or demise well and effectually maintain and support all and every the working-pits, shafts, levels, drifts and watercourses of and belonging to the said mines with all such timber and deals and other materials as shall be requisite or necessary for that purpose, and so as to prevent the same and the roofs of the said mines from falling in or being otherwise damaged; and shall and will at the end or other sooner determination of the said term, peaceably and quietly yield and deliver unto the Commissioner of Public Works and Mines, or the Deputy Commissioner of the district, or such other person or persons as the Lieutenant-Governor for the time being shall appoint under his sign manual to receive and take possession thereof, all the said mines and all and singular other the premises hereinbefore mentioned, except such

CHAP. 7. furnaces, engines, mills, forges, foundries, railroads, implements, houses and buildings as shall not be attached to the freehold, in such good order, plight and condition as fair-wrought mines ought to be left, with such timber, deals and other material as aforesaid (such mines as during the term hereby granted shall be abandoned by reason of their being unproductive only excepted.) Provided always, and it is hereby agreed and declared, and the said lessees, for themselves, their heirs, executors, administrators and assigns, do accept this grant or demise under the condition that in case default shall be made by the said lessees, their executors, administrators or assigns, in keeping such book or books of account, or in making such entries therein, or in delivering such affidavit or affidavits as aforesaid, or in payment of the said royalties hereby reserved for the space of ten days after the periods hereinbefore appointed for paying the same, or in the keeping annually employed on the demised premises the amount of labor herein above specified; or if the affidavits hereinbefore set forth and required to be made shall be false and fraudulent, or any other covenant herein contained shall not be kept and observed, then and in every or any or either of the said cases these presents and all and every the powers and privileges hereby granted shall be utterly null and void, anything to the contrary thereof of these presents notwithstanding.

Provided always nevertheless That it shall and may be lawful for the said lessees, their executors, administrators and assigns, at any time or times hereafter when so minded, to give notice in writing and file the same in the office of the Deputy Commissioner of Mines of the district, or of the Commissioner of Public Works and Mines in any District where there is no deputy, setting forth that they are desirous of surrendering this lease; and in such case, so soon as any such notice shall be so filed in the office of the Commissioner of Public Works and Mines, the interest and estate of the said lessees in the demised premises shall forthwith revert in her said Majesty, and the said lessees, their executors, administrators or assigns shall thenceforth cease to have any interest therein, or to be liable under the terms and provisions of this lease for any royalty, except the royalty on gold or silver, mined or obtained up to the date of said surrender, or in any other way than from quartz or other material crushed at licensed mills.

Provided also further, And it is the true intent and meaning of these presents that the said lessees, their executors, administrators or assigns, shall continue and remain liable under the conditions of this lease for and in respect of any matter or thing herein or hereby covenanted

to be done or performed, and for which a liability shall have existed at the date of such surrender, and also shall continue and remain liable for all royalty due as last above mentioned at the date of said surrender. CHAP. 7.

In witness whereof, Our Sovereign Lady the Queen has caused \_\_\_\_\_, Commissioner of Public Works and Mines for the Province of Nova Scotia, to subscribe his hand and seal of office to this Indenture, and the said Lessees have subscribed their hands and seals thereto.

Signed, Sealed and Delivered, by the said }  
Commissioner of Public Works and } [L.S.]  
Mines in the presence of }  
By the said Lessees }  
in presence of } [L.S.]

B.

We, \_\_\_\_\_, of \_\_\_\_\_, in the county of \_\_\_\_\_, do hereby declare that we are the legal owners under lease, No. \_\_\_\_\_, district \_\_\_\_\_, dated the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_, of \_\_\_\_\_ shares in said lease mentioned.

Given under our hands and seals, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_.

Personally appeared before me \_\_\_\_\_, of \_\_\_\_\_, who being sworn, says that \_\_\_\_\_ duly signed the foregoing declaration in his presence.

Sworn before me at \_\_\_\_\_, this \_\_\_\_\_ }  
day of \_\_\_\_\_, A. D. 18\_\_\_\_. }

C.

Know all men by these presents that I, \_\_\_\_\_, of \_\_\_\_\_, in the county of \_\_\_\_\_, in consideration of \_\_\_\_\_ dollars to me in hand, well and truly paid by \_\_\_\_\_ of \_\_\_\_\_, have sold, assigned, transferred and set over, and by these presents do sell, assign, transfer and set over to \_\_\_\_\_, of \_\_\_\_\_, his executors, administrators and assigns, \_\_\_\_\_ shares owned by me under mining lease No. \_\_\_\_\_, in gold district \_\_\_\_\_. To have and to hold the same to the said \_\_\_\_\_, his executors, administrators and assigns.

In witness whereof I have hereunto set my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_.

Signed, sealed, and delivered, }  
in presence of \_\_\_\_\_. }

Personally appeared before me, \_\_\_\_\_, of \_\_\_\_\_, who, being sworn says that \_\_\_\_\_ duly signed the above transfer in his presence.

Sworn before me at \_\_\_\_\_, this \_\_\_\_\_ }  
day of \_\_\_\_\_, A. D. 18\_\_\_\_. }

J.P.



CHAP. 7.

D.

DISTRICT.

No. of Lease.	Date of Lease.	Date of Issue.	Date of Registry.	Description.	
To whom leased.	Shares or parts.	To whom leased.	Shares or parts.		
No.	By whom sold.	Shares or parts.	Date of Registry.	Conveyance.	To whom sold.

E.

To A. B. and C. D., lessee of certain mining areas, by virtue of a lease from Her Majesty the Queen to ———, bearing date the ——— day of ———, A. D. 18—, (*or, if the lease has been assigned, to A. B. and C. D., assignees of the lessees of certain, &c., &c., as above.*)

Whereas it has been represented and come to the knowledge of the Commissioner of Public Works and Mines that the mines and minerals in the said lease described and conveyed have been abandoned for the space of one year, have not been effectively or continuously worked, or have been worked only colorably, and that the lessee or lessees (or their assignees) have failed to comply with the terms, covenants and stipulations in the lease contained :

You are hereby notified that the said charge or complaint will be investigated before me, at my office in the Province Building, at Halifax, on the ——— day of ———, in the year of Our Lord one thousand eight hundred and ———.

Dated the ——— day of ———, A. D. 18—.

E. F.,

Commissioner of Public Works and Mines.

## F.

## CHAP. 7.

In pursuance of a notice duly served on the lessee or lessees (*or assignees as the case may be*), under a lease of certain mining areas, situate and being at ———, in the county of ———, made between the Queen of the one part, and A. B. and C. D., of ———, &c., of the other part, and dated the ——— day of ———, A. D. 18—. I have examined into the matter of 'complaint against the said lessee or lessees (*or assignees, &c.*) for not working the said mining areas effectively and in accordance with the terms, covenants and stipulations in the said lease contained, and the true intent and meaning of the laws in such case made and provided; and on due consideration after the examination of witnesses and the facts of the case, I being satisfied that the charge has been fully made out, have decided and declared, and by these presents do decide and declare, the said mining areas, and every part and parcel thereof, to be forfeited.

Witness my hand at Halifax, this ——— day of ———  
A. D. 18—.

E. F.,

Commissioner of Public Works and Mines,  
Or G. H., Deputy Commissioner of Mines.

## G.

Bond to the Queen and her successors in penalty of \$600

Whereas the Commissioner of Public Works and Mines hath by a decision dated the ——— day of ———, A. D. 18—, decided and declared certain mining areas, formerly leased to A. B. and C. D., by lease dated the ——— day of ———, A. D. 18—, forfeited, and the above bounden G. H., J. K., &c., have appealed against the said decision to the Supreme Court, (*or a judge of the Supreme Court, as the case may be*).

Now the condition of this obligation is such that if the said G. H., J. K., &c., do and shall obey and abide by the judgment that shall be given herein, and shall well and truly pay all costs which they may be adjudged to pay in the premises, then this obligation shall be void, otherwise the same shall remain in force.

Signed, sealed and delivered } in presence of }	G. H.	[L. s.]
	J. K.	[L. s.]

CHAP. 8.

## CHAPTER 8.

## OF THE REGULATION OF MINES.

Alternative title. 1. This Chapter may be legally cited, when desirable, as "The Mines Regulation Chapter."

Definition of terms used in Chapter. 2. In this Chapter, unless the context otherwise requires,—the term "mine" includes every shaft in the course of being sunk, and every level and inclined plane in the course of being driven for commencing or opening any mine, or for searching for or proving minerals, and all the shafts, levels, planes, works, machinery, tramways, railways and sidings both below ground and above ground, in and adjacent to a mine, and any such shaft, level and inclined plane of and belonging to the mine.

The term "shaft" includes pit.

The term "inclined plane" includes slope.

The term "plan" includes a map and section or sections, and a correct copy or tracing of any original plan as so defined.

The term "Commissioner" means the Commissioner of Public Works and Mines.

The term "Inspector" used in this Chapter means an Inspector of Mines appointed under the laws of this Province relating to Mines and Minerals.

The term "Deputy Inspector" used in this Chapter means a Deputy Inspector of Mines appointed under the laws of this Province relating to Mines and Minerals, who shall have the same power of inspection as the Inspector, but shall be under his direction.

The term "owner," when used in relation to any mine, means any person or body corporate who is the immediate proprietor, or lessee, or occupier of any mine, or of any part thereof, and does not include a person or body corporate who merely receives a royalty or rent from a mine, or is merely the proprietor of a mine subject to any lease, grant or license for the working thereof, or is merely the owner of the soil, and not interested in the minerals of the mine; but any contractor for the working of any mine or any part thereof shall be subject to this Chapter in like manner as if he were an owner, but so as not to exempt the owner from any liability.

The term "agent" when used in relation to any mine, CHAP. 8.  
means any person having on behalf of the owner care or  
direction of any mine, or any part thereof.

The term "manager," when used in relation to any  
mine, means the chief officer having the control and daily  
supervision of the mine.

The term "underground manager," when used in relation  
to any mine, means the person next in charge to the manager  
and having the supervision of the underground workings.  
The term "overman," when used in relation to any mine,  
means the person in charge of any mine, or any portion of  
a mine, next in charge to the underground manager.

The term "boy" means any male person under the age  
of eighteen years.

3. If any question arises whether a mine is a mine to  
which this Chapter applies, such question shall be referred  
to the Commissioner, whose decision thereon shall be final.

Any questions as  
to character of  
mine shall be  
decided by Com-  
missioner.

#### EMPLOYMENT OF BOYS.

4. No boy under the age of ten years shall be employed  
in or about or allowed to be for the purpose of employ-  
ment in or about any mine below ground or above ground.

No boy under  
ten to be employ-  
ed in any mine.

5. A boy of the age of ten and under the age of twelve  
years shall not be employed in or allowed to be for the  
purpose of employment in any mine below ground for  
more than sixty hours in any one week, or more than ten  
hours in any one day.

Time of employ-  
ment of boys  
between ten and  
twelve under  
ground.

6. For the purpose of the provisions of this Chapter  
with respect to the employment of such boys in a mine  
below ground, the following regulations shall have effect;  
that is to say,

Regulations as  
to the employ-  
ment of boys  
under ground.

- (1.) The period of each employment shall be deemed  
to begin at the time of leaving the surface, and  
to end at the time of returning to the surface:
- (2.) A week shall be deemed to begin at midnight on  
Saturday night, and to end at midnight on the  
succeeding Saturday night.

7. Where there is a shaft or an inclined plane or level  
in any mine, whether for the purpose of an entrance to  
such mine or of a communication from one part to another  
part of such mine, and persons are taken up or down or  
along such shaft, plane or level by means of any engine,  
windlass or gin driven or worked by steam or any  
mechanical power, or by an animal or by manual labour, a  
person shall not be allowed to have charge of such engine,  
windlass or gin, or of any part of the machinery, ropes,  
chains or tackle connected therewith, unless he is a male  
of at least eighteen years of age.

As to employ-  
ment of young  
persons about  
engines.

CHAP. 8. Where the engine, windlass or gin is worked by an animal, the person under whose direction the driver of the animal acts shall for the purposes of this section be deemed to be the person in charge of the engine, windlass or gin; but such driver shall not be under twelve years of age. This clause shall not apply to operations known in the mines as counter or back balances.

Penalty for employment of persons in contravention of this Chapter.

8. If any person contravenes or fails to comply with, or permits any person to contravene or fail to comply with, any provision of this Chapter with respect to the employment of boys, or to the employment of persons about any engine, windlass or gin, he shall be guilty of an offence against this Chapter; and in case of any such contravention or non-compliance by any person whomsoever, the owner, agent and manager shall each be guilty of an offence against this Chapter, unless he prove that he had taken all reasonable means by publishing and to the best of his power enforcing the provisions of this Chapter to prevent such contravention or non-compliance.

Proviso.

If it appear that a boy or a person employed about an engine, windlass or gin was employed on the representation of his parent or guardian that he was of that age at which his employment would not be in contravention of this Chapter, and under the belief in good faith that he was of that age, the owner, agent or manager of the mine and employer shall be exempted from any penalty, and the parent or guardian shall for such misrepresentation be deemed guilty of an offence against this Chapter.

#### WAGES.

No wages to be paid at public houses, &c.

9. No wages shall be paid to any person employed in or about any mine at or within any public house, beer shop or place for the sale of any spirits, beer, wine or other spirituous or fermented liquor, or other house of entertainment, or any office, garden or place belonging or contiguous thereto, or occupied therewith.

Every person who contravenes or fails to comply with or permits any person to contravene or fail to comply with this section shall be guilty of an offence against this Chapter; and in the event of any such contravention or non-compliance by any person whomsoever, the owner, agent and manager shall each be guilty of an offence against this Chapter unless he prove that he had taken all reasonable means by publishing and to the best of his power enforcing the provisions of this section to prevent such contravention or non-compliance.

10. Where the amount of wages paid to any of the persons employed in a mine depends on the amount of mineral gotten by them, such persons shall if the majority of such persons so desire, and unless the mine is exempted by the Commissioner, be paid according to the weight of the mineral gotten by them, and such mineral shall be truly weighed accordingly.

CHAP. 8.

As to payment of wages according to weight of mineral.

Provided always, that nothing herein contained shall preclude the owner, agent or manager of the mine from agreeing with the persons employed in such mine that deductions shall be made in respect of stones or materials other than mineral contracted to be gotten which shall be sent out of the mine with the mineral contracted to be gotten, or in respect of any tubs, cars or hutches being improperly filled in those cases where they are filled by the getter of the mineral or his drawer or by the person immediately employed by him, such deductions being determined by the banksman or weigher and check-weigher if there be one.

Proviso.

If any person contravenes or fails to comply with or permits any person to contravene or fail to comply with this section he shall be guilty of an offence against this Chapter, and in the event of any contravention of or non-compliance with this section by any person whomsoever the owner, agent and manager shall each be guilty of an offence against this Chapter, unless he prove that he had taken all reasonable means by publishing and to the best of his power enforcing the provisions of this section to prevent such contravention and non-compliance.

11. The persons who are employed in a mine and are paid according to the weight of the mineral gotten by them may, at their own cost, station a person (in this Chapter referred to as a "check-weigher") at the place appointed for the weighing of such mineral, in order to take an account of the weight thereof on behalf of the persons by whom he is so stationed. The check-weigher shall be one of the persons employed either in the mine at which he is so stationed or in another mine belonging to the owner of that mine. He shall have every facility afforded to him to take a correct account of the weighing for the persons by whom he is so stationed; and if in any mine, proper facilities are not afforded to the check-weigher as required by this section, the owner, agent and manager of such mine shall each be guilty of an offence against this Chapter, unless he prove that he had taken all reasonable means by enforcing to the best of his power the provisions of this section to prevent such contravention or non-compliance.

Check-weigher on behalf of mining employees, his appointment, duties and removal.

CHAP. 8. The check-weigher shall not be authorized in any way to impede or interrupt the working of the mine or to interfere with the weighing, but shall be authorized only to take such account as aforesaid; and the absence of the check-weigher shall not be a reason for interrupting or delaying such weighing.

If the owner, agent or manager of the mine desires the removal of a check-weigher, on the ground that such check-weigher has impeded or interrupted the working of the mine or interfered with the weighing, or has otherwise misconducted himself, he may complain to any justice of the peace of the county in which the mine is situated, who, if of opinion that the owner, agent or manager shows sufficient *prima facie* ground in writing for the removal of such check-weigher, shall by summons call upon the check-weigher to appear at a certain time and place therein mentioned. Such summons and a copy of the said complaint shall be served on the check-weigher by any constable of the county at least five days before the return day of said summons. In default of appearance of said check-weigher to answer the complaint, proof of the service of the said summons shall be furnished by the said constable in the same way as in ordinary civil suits before a justice of the peace. On the hearing of the case the justice shall hear the parties, and if he think that at the hearing sufficient ground is shown by the owner, agent or manager to justify the removal of the check-weigher, or in case of the non-appearance of the said check-weigher and on proof of the service of the summons as aforesaid, he shall make a summary order for his removal, and the check-weigher shall thereupon be removed, but without prejudice to the stationing of another check-weigher in his place.

The justice may in every case make such order as to the costs of the proceedings as he thinks just, and execution may issue for the recovery of the same as in suits for debts before a justice of the peace.

#### SINGLE SHAFTS.

Prohibition of single shafts. 12. The owner, agent or manager of a mine shall not employ any person in such mine or permit any person to be in such mine for the purpose of employment therein unless there are in communication with every seam of such mine for the time being at work at least two shafts or outlets, separated by natural strata of not less than ten feet in breadth, by which shafts or outlets distinct means of ingress and egress are available to the persons employed in such seam, whether such two shafts or outlets belong to the same mine or one or more of them belong to another

mine, and unless there is a communication of not less than CHAP. 8.  
four feet wide and three feet high between such two shafts  
or outlets, and unless there is at each of such two shafts or  
outlets or upon the works belonging to the mine, and either  
in actual use or available for use within a reasonable time,  
proper apparatus for raising and lowering persons at each  
such shaft or outlet.

Provided that such separation shall not be deemed  
incomplete by reason only that openings through the strata  
between the two shafts or outlets have been made for  
temporary purposes of ventilation, drainage or otherwise ;  
or in the case of mines where inflammable gas has not been  
found within the preceding twelve months for the same  
purposes, although not temporary.

Every owner, agent and manager of a mine who acts in  
contravention of or fails to comply with this section shall  
be guilty of an offence against this Chapter.

The Supreme Court or any judge thereof, whether any  
other proceedings have or have not been taken, may, upon the  
application of the Attorney-General, prohibit by injunction  
the working of any mine in which any person is employed  
or is permitted to be for the purpose of employment in  
contravention of this section, and may award such costs in  
the matter of the injunction as the court or judge thinks  
just ; but this provision shall be without prejudice to any  
other remedy permitted by law for enforcing the provisions  
of this Chapter.

Written notice of the intention to apply for such  
injunction in respect of any mine shall be given to the  
owner, agent or manager of such mine not less than twenty  
days before the application is made.

13. The provisions of this Chapter with respect to shafts or outlets shall not apply in the following cases ; Exemptions from provisions as to single shafts.  
that is to say,

- (1.) In the case either of opening a new mine for the purpose of searching for or proving minerals, or of any working for the purpose of making a communication between two or more shafts, so long as not more than twenty persons are employed below ground at any one time in the workings in connection with each shaft or outlet in such new mine or such working ;
- (2.) In the case of any proved mine so long as it is exempted in writing by the Commissioner on the ground either—
  - (a.) that the mine is not a coal mine, or a mine with inflammable gas, that sufficient provision has been made against danger from other causes



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- than explosions of gas by using stone, brick or iron in the place of wood for the lining of the shaft and the construction of the midwall; or
- (b.) that the workings in any seam of a mine have reached the boundary of the property or other extremity of the mineral field of which such seam is a part, and that it is expedient to work away the pillars already formed in course of the ordinary working, notwithstanding that one of the shafts or outlets may be cut off by so working away the pillars of such seam; and so long as there are not employed below ground at any one time in the workings in connection with the shaft or outlet in any such mine more than twenty persons, or (if the mine is not a coal mine or mine with inflammable gas) than such larger number of persons as may for the time being be allowed by the Commissioner:
- (3.) In the case of any mine, one of the shafts or outlets of which has become by reason of some accident unavailable for the use of the persons employed in the mine, so long as such mine is exempted in writing by the Commissioner, and the conditions on which such exemption is granted are duly observed.

Commissioner to decide upon application for extension of time to provide additional shafts.

14. If a written representation be made to the Commissioner by the owner or agent of a mine not having at the passing of this Chapter two shafts or outlets, that an extension of time for providing an additional shaft or outlet ought to be granted to him, the question as to whether such exemption or extension of time ought to be granted shall be decided by the Commissioner.

## RETURNS, NOTICES AND ABANDONMENT.

Returns by lessees, owners, agents, and managers of mines.

15. For procuring mining returns—
- (1.) The lessee of every mine leased from the Crown shall send to the office of the Commissioner a correct return of all the minerals wrought in such mine, as is required by Chapter 7 “Of Mines and Minerals,” and such other information and at the stated times specified in such Chapter:
- (2.) And on or before the thirty-first day of January in every year the owner, agent or manager of every mine to which this Chapter applies, other than of every mine leased from the Crown, shall send to the office of the Commissioner a correct return specifying with respect to the year ending on the preceding thirty-first day

of December the quantity of coal, iron ore, or CHAP. 8.  
 other mineral wrought in such mine, and the number of persons ordinarily employed in or about such mine below ground and above ground, distinguishing the persons and labour below ground and above ground and the different classes of the persons so employed :

- (3.) The owner, agent, manager or occupier of every mine shall once a year if required by the Inspector send to him a return of facts relating to the mode and description of means of ventilation, a description of the upcast and downcast shafts, of the length and sectional area of the airways, the number of splits and quantity of fresh air in cubic feet per minute, and the average total quantity of air in cubic feet per minute in his mine.

The returns shall be in such forms as may be from time to time prescribed by the Commissioner, who shall from time to time on application furnish forms for the purpose of such returns.

Every owner, agent or manager of a mine who fails to comply with this section, or makes any return which is to his knowledge false in any particular, shall be guilty of an offence against this Chapter.

16. Where in or about any mine whether above or below ground, either Written notice  
to be given of  
accidents in  
mines.

- (1.) Loss of life or any personal injury to any person employed in or about the mine occurs by reason of any explosion of gas, powder, or of any steam boiler ; or
- (2.) Loss of life or any serious personal injury to any person employed in or about the mine occurs by reason of any accident whatever ;

the owner, agent, or manager of the mine shall, within twenty-four hours next after the explosion or accident, send notice in writing of the explosion or accident and of the loss of life or personal injury occasioned thereby to the office of the Commissioner, and shall specify in such notice the character of the explosion or accident, and the number of persons killed and injured respectively, and as soon after as possible and before the end of each year a return of facts relating to such accident or explosion in the form given in the Schedule to this Chapter.

Where any personal injury, of which notice is required to be sent under this section, results in the death of the person injured, notice in writing of the death shall be sent

CHAP. 8. to the office of the Commissioner within twenty-four hours after such death comes to the knowledge of the owner, agent or manager.

Every owner, agent or manager who fails to act in compliance with this section shall be guilty of an offence against this Chapter.

Notice of changes in ownership or working of mine.

17. In any case,

- (1.) Where any change occurs in the name of, or in the name of the owner, agent, or manager of, any mine, or in the officers of any incorporated company which is the owner of a mine not exempted from compliance with this clause by the Commissioner ;
- (2.) And in any of the following cases of coal mines, namely,
  - (a.) Where any working is commenced for the purpose of opening a mine ;
  - (b.) Where a shaft of any mine is abandoned or the working thereof discontinued ; or
  - (c.) Where the working of a mine is recommenced after an abandonment or discontinuance for a period exceeding two months ;

the owner, agent or manager of such mine shall give notice thereof at the office of the Commissioner within two months after such commencement, abandonment, discontinuance, recommencement or change ; and if such notice be not given, the owner, agent or manager shall be guilty of an offence against this Chapter.

Fencing of abandoned mines.

18. Where any mine is abandoned or the working thereof discontinued, at whatever time such abandonment or discontinuance occurs, the owner thereof, and every other person interested in the mineral of such mine, shall cause the top of the shaft and any side entrance from the surface to be and to be kept securely fenced for the prevention of accidents :

Provided that—

- (1.) Subject to any contract to the contrary the owner of the mine shall, as between him and any other person interested in the minerals of the mine, be liable to carry into effect this section, and to pay any costs incurred by any other person interested in the minerals of the mine in carrying this section into effect ;
- (2.) Nothing in this section shall exempt any person from any liability under any other Chapter or Act, or otherwise.

If any person fail to act in conformity with this section, he shall be guilty of an offence against this Chapter.

19. Where any mine is abandoned, the owner of such mine at the time of such abandonment shall, within three months after such abandonment, send to the office of the Commissioner an accurate plan on a scale of not less than a scale of two chains to one inch, showing the boundaries of the workings of such mine up to the time of the abandonment, with the view of its being preserved under the care of the Commissioner.

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Plans of abandoned mine to be sent to Commissioner.

Provided that this section shall not apply to a mine (which is not a mine of coal, of stratified iron-stone, of shale, or of fireclay) in which less than twelve persons have ordinarily been employed below ground; unless the owner, his agent or manager has been specially required by the Commissioner to keep a plan of his mine.

Proviso.

Every person who fails to comply with this section shall be guilty of an offence against this Chapter.

#### INSPECTION.

20. The Inspector shall have power to do all or any of the following things; namely,

Powers of Inspector.

- (1.) To make such examination and inquiry as may be necessary to ascertain whether the provisions of this Chapter relating to matters above ground or below ground are complied with in the case of any mine;
- (2.) To enter, inspect and examine any mine and every part thereof at all reasonable times by day and night, but so as not to impede or obstruct the working of the said mine;
- (3.) To examine into and make inquiry respecting the state and condition of any mine, or any part thereof, and the ventilation of the mine, and the sufficiency of the special rules for the time being in force in the mine, and all matters and things connected with or relating to the safety of the persons employed in or about the mine or any mine contiguous thereto;
- (4.) To exercise such other powers as may be necessary for carrying this Chapter into effect.

Every person who wilfully obstructs the Inspector in the execution of his duty under this Chapter, and every owner, agent and manager of a mine who refuses or neglects to furnish to the Inspector the means necessary for making any entry, inspection, examination or enquiry under this Chapter in relation to such mine, shall be guilty of an offence against this Chapter.

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Proceedings in cases of causes of danger not specially provided for.

21. If in any respect (which is not provided against by any express provision of this Chapter, or by any special rule) the Inspector find any mine, or any part thereof, or any matter, thing or practice in or connected with any such mine, to be dangerous or defective, so as in his opinion to threaten or tend to the bodily injury of any person, or to the waste or misuse of any property of or leased from the Crown, the Inspector may give notice in writing thereof to the owner, agent or manager of the mine, and shall state in such notice the particulars in which he considers such mine or any part thereof, or any matter, thing or practice, to be dangerous or defective, and require the same to be remedied; and unless the same be forthwith remedied the Inspector shall also report the same to the Commissioner.

If the owner, agent or manager of the mine object to remedy the matter complained of in the notice, he may within ten days after the receipt of such notice, send his objection in writing, stating the grounds thereof to the Commissioner, who shall thereupon hear such evidence upon the matter as may be produced before him, and together with one arbitrator appointed by the Inspector and one arbitrator appointed by the owner, agent or manager objecting, shall determine the same; and the award of the Commissioner with one of the arbitrators shall be final.

Five days' notice of the time and place where the Commissioner will hear such evidence shall be given to the parties interested.

If the owner, agent or manager fail to comply either with the requisition of the notice where no objection is sent within the time aforesaid, or with the decision of the Commissioner and arbitrators within five days after the expiration of the time for objection or the time of making of the decision of the Commissioner and arbitrators (as the case may be), he shall be guilty of an offence against this Chapter, and the notice and decision shall respectively be deemed to be written notice of such offence:

Provided that the Commissioner, if satisfied that the owner, agent or manager has taken active measures for complying with the notice or decision, but has not with reasonable diligence been able to complete the works, may extend the time of five days (above specified) to such time as he shall deem proper, and if the works are completed within such time no penalty shall be inflicted.

No person shall be precluded by any agreement from doing such acts as may be necessary to comply with the provisions of this section or be liable under any contract to any penalty or forfeiture for doing such acts.

22. The owner, agent or manager of every mine of coal, of stratified ironstone, of shale, or of fireclay, shall keep in the office at the mine an accurate plan of the workings of such mine, showing the workings up to at least six months previously, also the owner, agent or manager of all other mines in which more than twelve persons are ordinarily employed below ground, also of all other mines when specially requested to do so by the Commissioner.

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Plans of mines to be kept by owners, &c.

The owner, agent or manager of the mine shall produce to the Inspector at the mine such plan, and shall if requested by the Inspector mark on such plan the progress of the workings of the mine up to the time of such production, and shall allow the Inspector to examine the same, and shall furnish to the Inspector a correct copy of such plan when requested by the Inspector.

The owner, agent or manager on or before the first day of April of each year shall furnish to the Inspector a correct plan or tracing (not before furnished) of the workings up to the first day of January then last past.

If the owner, agent or manager of any mine fail to keep such plan as is prescribed by this section, or wilfully refuses to produce or allow to be examined such plan, or wilfully refuses to furnish such copy, or wilfully withholds any portion of any plan, or conceals any part of the workings of his mine, or produces an imperfect or inaccurate plan, unless he shows that he was ignorant of such concealment, imperfection or inaccuracy he shall be guilty of an offence against this Chapter; and further, the Inspector may by notice in writing (whether a penalty for such offence has or has not been inflicted) require the owner, agent or manager to cause an accurate plan, such as is prescribed by this section, to be made within a reasonable time at the expense of the owner of the mine, on a scale of not less than two chains to one inch, or on such other scale as the plan then used in the mine is constructed on.

If the owner, agent or manager fail within twenty days, or such further time as may be shown to be necessary, after the requisition of the Inspector to make or cause to be made such plan he shall be guilty of an offence against this Chapter.

23. The Commissioner may at any time direct the Inspector to make a special report with respect to any accident in a mine, which accident has caused loss of life or personal injury to any person, and in such case the Inspector shall have power to summon any person or persons before him, and such persons to examine under oath if necessary, and shall reduce their evidence into writing

Commissioner may require special reports as to accidents.

CHAP. 8. and have the same signed by them, and the Commissioner shall cause such report to be made public at such time and in such manner as he thinks expedient.

## CORONERS.

Provisions as to Coroners' inquests, on deaths from accidents in mines.

24. With respect to Coroners' inquests on the bodies of persons whose deaths may have been caused by explosions or accidents in mines, the following provisions shall have effect :

- (1.) Where a coroner holds an inquest upon a body of any person whose death may have been caused by any explosion or accident of which notice is required by this Chapter to be given to the Commissioner, the coroner shall adjourn such inquest when the majority of the jury think it necessary so to adjourn such inquest to enable the Inspector wherever practicable, or some other properly qualified person appointed by the Commissioner, to be present to watch the proceedings ;
- (2.) The coroner, at least four days before holding the adjourned inquest, shall send to the Commissioner notice in writing of the time and place of holding such adjourned inquest ;
- (3.) The coroner before the adjournment may take evidence to identify the body, and may order the interment thereof ;
- (4.) The Inspector or such other person so appointed, or a person appointed by the workmen of the colliery at which the accident occurred, shall be at liberty at any such inquest to examine any witness, subject nevertheless to the order of the coroner ;
- (5.) Where evidence is given at an inquest at which the Inspector or such other person so appointed is not present of any neglect as having caused or contributed to the explosion or accident, or of any defect in or about the mine appearing to the coroner or jury to require a remedy, the coroner shall send to the Inspector notice in writing of such neglect or default ;
- (6.) Any person having a personal interest in, or employed in or in the management of the mine in which the explosion or accident occurred, or any relative of the deceased person upon whose body the inquest is to be held, shall not be qualified to serve on the jury empanelled on

the inquest, or to act as coroner therein ; and CHAP. 8.  
 it shall be the duty of the constable or other  
 officer not to summon any person disqualified  
 under this provision, and it shall be the duty  
 of the coroner not to allow any such person to  
 be sworn or to sit on the jury.

- (7.) If in the opinion of the Inspector it will lead to a more thorough investigation, and will be more conducive to the ends of justice, he may require the constable or other officer to summon as jurymen not more than three working men employed at any other colliery than that at which the accident occurred, who shall form part of the jury sworn in such inquest.

Every person who fails to comply with the provisions of this section shall be guilty of an offence against this Chapter.

#### RULES.

##### *General Rules.*

25. The following general rules shall be observed, so far as is reasonably practicable, in every mine : General rules to be observed in mines.

- (1.) An adequate amount of ventilation shall be constantly produced in every mine to dilute and render harmless noxious gases to such an extent that the working places of the shafts, levels, stables, winzes, sumps and workings of such mine, and the travelling roads to and from such working places, shall be in a fit state for working and passing therein. Ventilation.
- (2.) In every mine in which inflammable gas has been found within the preceding twelve months a competent person or persons who shall be appointed for the purpose shall inspect with a safety lamp that part of the mine being or intended to be worked, and the roadway leading thereto, within five hours of the time of each shift commencing work, and if inflammable gas has been found within the preceding three months, then within three hours of the time of commencing work.
- (3.) In every mine worked for coal or any stratified deposit, in which inflammable gas has not been found within the preceding twelve months, then once in every twenty-four hours a competent person or persons who shall be appointed for the purpose shall, within five hours before time for commencing work in any part of the mine,



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- inspect that part of the mine and the roadways leading thereto, and shall make a true report of the condition thereof so far as ventilation is concerned; and a workman shall not go to work in such part until the same and the roadways leading thereto are stated to be safe.
- Fencing of places not in use. (4.) All entrances to any place in a mine worked for coal or any stratified deposit not in actual course of working and extension shall be properly fenced across the whole width of such entrance, so as to prevent persons inadvertently entering the same.
- Stations. (5.) A station or stations shall be appointed at the entrance to a mine worked for coal or any stratified deposit, or to the different parts of the same mine, as the case may require, and a workman shall not pass beyond any such station until the mine or part of the mine beyond the same has been inspected and stated to be safe.
- Withdrawal of workmen in case of danger. (6.) If at any time it is found by the person for the time being in charge of the mine or any part thereof that by reason of noxious gases prevailing in such mine or such part thereof, or of any cause whatever, the mine or the said part is dangerous, every workman shall be withdrawn from the mine or such part thereof as is so found dangerous, and a competent person who shall be appointed for the purpose shall inspect the mine or such part thereof as is so found dangerous, and if the danger arises from inflammable gas shall inspect the same with a locked safety lamp, and in every case shall make a true report of the condition of such mine or part thereof; and a workman shall not, except in so far as is necessary for inquiring into the cause of danger or for the removal thereof, or for exploration, be re-admitted into the mine, or such part thereof as was so found dangerous, until the same is stated by such report not to be dangerous. Every such report shall be recorded in a book which shall be kept at the mine for the purpose, and shall be entered by the person making the same.
- Safety Lamps, &c. (7.) In every working approaching any place where there is likely to be an accumulation of explosive gas, no lamp or light other than a locked safety lamp shall be allowed or used; and whenever

safety lamps are required by this Chapter, or CHAP. 8.  
 by the special rules made in pursuance of this  
 Chapter, to be used, a competent person who  
 shall be appointed for the purpose shall examine  
 every safety lamp immediately before it is  
 taken into the workings for use and ascertain  
 it to be secure and securely locked; and in any  
 part of a mine in which safety lamps are so  
 required to be used, they shall not be used until  
 they have been so examined and found secure  
 and securely locked, and shall not without due  
 authority be unlocked; and in the said part of  
 a mine a person shall not, unless he is appointed  
 for the purpose, have in his possession any key  
 or contrivance for opening the lock of any such  
 safety lamp, or any lucifer match or apparatus  
 of any kind for striking a light.

(8.) Gunpowder or other explosive or inflammable <sup>Gunpowder and</sup> substance shall only be used in the mine under-ground as <sup>blasting.</sup> follows:

- (a.) It shall not be stored in the mine.
- (b.) It shall not be taken into the mine, except in a case or canister containing not more than six pounds.
- (c.) A workman shall not have in use at one time in any one place more than one of such cases or canisters.
- (d.) A charge of powder which has missed fire shall not be unrammed;
- (e.) It shall not be taken into or be in the possession of any person in any mine or district of a mine, and shall not be used except in accordance with the following regulations, during three months after any inflammable gas has been found in any such mine or district of a mine; namely:
  - (1.) A competent person who shall be appointed for the purpose shall, immediately before firing the shot, examine the place where it is to be used and the places contiguous thereto, and shall not allow the shot to be fired unless he finds it safe to do so; and a shot shall not be fired except by or under the direction of a competent person who shall be appointed for the purpose;
  - (2.) If such inflammable gas issues so freely that it shows a blue cap on the flame of the safety lamp, it shall only be used—
    - (a.) Either in those cases of stone drifts, stone work and sinking of shafts, in which the ventilation is so managed that the return air from the place

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where the powder is used passes into the main return air course without passing any place in actual course of working; or,

(b.) When the persons ordinarily employed in the mine are out of the mine or out of the part of the mine where it is used.

(f.) Where a mine is divided into separate districts in such manner that each district has an independent intake and return air-way from the main air-course and the main return air-course, the provisions of this rule with respect to gunpowder or other explosive or inflammable substance shall apply to each such district in like manner as if it were a separate mine.

Water and bore  
holes.

(9.) Where a place is likely to contain a dangerous accumulation of water the working approaching such place shall not exceed eight feet in width or height, and there shall be constantly kept at a sufficient distance, not being less than five yards in advance, at least one bore-hole near the centre of the working and sufficient flank bore-holes on each side.

Signals and man-  
holes.

(10.) Every underground plane on which persons travel, which is self-acting or worked by an engine, windlass or gin, shall be provided (if exceeding thirty yards in length) with some proper means of signalling between the stopping places and the ends of the plane, and shall be provided in every case, at intervals of not more than twenty yards, with sufficient man-holes for places of refuge.

(11.) Every road on which persons travel underground where the produce of the mine in transit exceeds ten tons in any one hour over any part thereof, and where the load is drawn by a horse or other animal shall be provided, at intervals of not more than fifty yards, with sufficient man-holes or with a space for a place of refuge, which space shall be of sufficient length and of at least three feet in width between the wagons running on the tramroad and the side of such road.

(12.) Every man-hole and space for a place of refuge shall be constantly kept clear, and no person shall place anything in a man-hole or such space so as to prevent access thereto.

Fencing of old  
shafts.

(13.) The top of every shaft which for the time being is out of use, or used only as an air shaft, shall be securely fenced.

Fencing of en-  
trances to shafts.

(14.) The top and all entrances between the top and bottom of every working or pumping shaft shall be properly fenced; but this shall not be taken to forbid the

temporary removal of the fence for the purpose of repairs CHAP. 8.  
or other operations if proper precautions are used.

(15.) Where the natural strata are not safe, every Securing of shafts.  
working or pumping shaft shall be securely cased, lined,  
or otherwise made secure. \*

(16.) The roof and sides of every travelling road and Securing of roof and sides.  
working place shall be made secure, and a person shall not,  
unless appointed for the purpose of exploring or repairing,  
travel or work in any such travelling road or working  
place which is not so made secure.

(17.) In any mine which is usually entered by means Competent persons shall attend hoisting machinery.  
of machinery, a competent person of such age as prescribed  
by this Chapter shall be appointed for the purpose of  
working the machinery which is employed in lowering and  
raising persons therein, and shall attend for such purpose  
during the whole time that any person is below ground  
in the mine.

(18.) Every working shaft used for the purpose of Signalling on working shafts.  
drawing minerals or for the lowering or raising of persons  
shall, if exceeding fifty yards in depth, and not exempted  
in writing by the Inspector, be provided with guides and  
some proper means of communicating distinct and definite  
signals from the bottom of the shaft and from every  
entrance for the time being in work between the surface  
and the bottom of the shaft to the surface, and from the  
surface to the bottom of the shaft and to every entrance  
for the time being in work between the surface and the  
bottom of the shaft.

(19.) A sufficient cover overhead shall be used when Cover overhead in shaft.  
lowering or raising persons in every working shaft, except  
where it is worked by a windlass, or where the person is  
employed about the pump or some work of repair in the  
shaft, or where a written exemption is given by the  
Inspector.

(20.) A single-linked chain shall not be used for lower- Chains.  
ing or raising persons in any working shaft or place except  
for the short coupling chain attached to the cage or load.

(21.) There shall be on the drum of every machine Slipping of rope on drum.  
used for lowering or raising persons such flanges or horns,  
and also if the drum be conical, such other appliances as  
may be sufficient to prevent the rope from slipping.

(22.) There shall be attached to every machine worked Break and indicator.  
by steam, water or mechanical power, and used for lowering  
or raising persons, an adequate break, and also a proper  
indicator (in addition to any mark on the rope) which  
shows to the person who works the machine the position  
of the cage or load in the shaft.

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Machinery  
fenced.

(23.) Every fly-wheel and all exposed and dangerous parts of the machinery used in or about the mine shall be and be kept securely fenced.

Gauges and safety valves on boilers.

(24.) Every steam boiler shall be provided with a proper steam gauge and water gauge, to show respectively the pressure of steam and the height of water in the boiler, and with a proper safety valve.

Ladders.

(25.) A ladder permanently used for the ascent or descent of persons in the mine shall not be fixed in a vertical or over-hanging position, and shall be inclined at the most convenient angle which the space in which the ladder is fixed allows; and every such ladder shall have substantial platforms at intervals of not more than twenty yards.

Dressing rooms.

(26.) If more than twelve persons are ordinarily employed in the mine below ground, sufficient accommodation shall be provided above ground near the principal entrance of the mine, and not in the engine-house or boiler-house, for enabling the persons employed in the mine to conveniently dry and change their dresses.

Certain shafts,  
how used.

(27.) Where one portion of a shaft is used for the ascent and descent of persons by ladders or otherwise, and another portion is used for raising the material gotten in the mine, the first-mentioned portion shall be either cased or otherwise securely fenced off from the last-mentioned portion, or no person shall be permitted to travel in the shaft when the shaft is working.

Wilful damage,  
&c.

(28.) No person shall wilfully damage, or without proper authority remove or render useless, any fence, fencing, casing, lining, guide, means of signalling, signal, cover, chain, flange, horn, break, indicator, ladder, platform, steam gauge, water gauge, safety valve or other appliance or thing provided for any mine in compliance with this Chapter.

Observance of  
directions.

(29.) Every person shall observe such directions with respect to working as may be given to him with a view to comply with this Chapter or the special rules hereinafter provided for.

Daily inspection  
of machinery and  
works.

(30.) A competent person or persons who shall be appointed for the purpose shall, once at least in every twenty-four hours, examine the state of the external parts of the machinery and the state of the head-gear, working places, levels, planes, ropes, chains and other works of the mine which are in actual use, and once at least in every week shall examine the state of the shafts by which persons ascend or descend, and the guides or conductors therein.

Employees may  
appoint inspec-  
tors.

(31.) The persons employed in a mine may from time to time appoint two of their number to inspect the mine,

at their own cost, and the persons so appointed shall be allowed once at least in every month, accompanied, if the owner, agent or manager of the mine thinks fit, by himself or one or more of the officers of the mine, to go to every part of the mine, and to inspect the shafts, levels, planes, working places, return air-ways, ventilating apparatus, old workings and machinery, and shall be afforded by the owner, agent and manager and all persons in the mine every facility for the purpose of such inspection, and shall make a true report of the result of such inspection, and such report shall be recorded in a book to be kept at the mine for the purpose, and shall be signed by the persons who made the same.

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Every person who contravenes or does not comply with any of the general rules in this section shall be guilty of an offence against this Chapter; and in the event of any contravention of or non-compliance with any of the said general rules in the case of any mine by any person whomsoever being proved, the owner, agent and manager shall each be guilty of an offence against this Chapter, unless he prove that he had taken all reasonable means by publishing and to the best of his power enforcing the said rules as regulations for the working of the mine to prevent such contravention or non-compliance.

Contravention of section offence against Chapter.

### *Special Rules.*

26. The owner, agent or manager of any mine may if he think fit transmit to the Inspector for approval by the Commissioner rules (referred to in this Chapter as special rules) for the conduct and guidance of the persons acting in the management of such mine or employed in or about the same as, under the particular state and circumstances of such mine, may appear best calculated to prevent dangerous accidents, and to provide for the safety and proper discipline of the persons employed in or about the mine, and such special rules when established shall be signed by the Inspector who is Inspector at the time such rules are established, and shall be observed in and about every such mine in the same manner as if they were enacted in this Chapter.

Special rules in mine.

If any person who is bound to observe the special rules established for any mine acts in contravention of or fails to comply with any of such special rules, he shall be guilty of an offence against this Chapter, and also the owner, agent and manager of such mine shall each be guilty of an offence against this Chapter, unless he prove that he had taken all reasonable means by publishing and to the

CHAP. 8. best of his power enforcing the said rules as regulations for the working of the mine to prevent such contravention or non-compliance.

Special rules, how established.

27. The proposed special rules, together with a printed notice specifying that any objection to such rules on the ground of anything contained therein or omitted therefrom, may be sent by any of the persons employed in the mine to the Inspector at his address stated in such notice, shall, during not less than two weeks before such rules are transmitted to the Inspector, be posted up in like manner as is provided in this Chapter respecting the publication of special rules for the information of persons employed in the mine, and a certificate that such rules and notice have been so posted up shall be sent to the Inspector with the rules signed by the person sending the same.

If the rules are not objected to by the Commissioner within forty days after their receipt by the Inspector they shall be established. If the owner, agent or manager make any false statement with respect to the posting up of the rules and notices he shall be guilty of an offence against this Chapter.

How modified.

28. If the Commissioner is of opinion that the proposed special rules so transmitted or any of them do not sufficiently provide for the prevention of dangerous accidents in the mine, or for the safety of the persons employed in or about the mine, or are unreasonable, he may within forty days after the rules are received by the Inspector object to the rules, and propose to the owner, agent or manager in writing any modifications in the rules by way either of omission, alteration, substitution or addition.

If the owner, agent or manager do not within twenty days after the modifications proposed by the Commissioner are received by him object in writing to them, the proposed special rules with such modifications shall be established.

If the owner, agent or manager send his objection in writing within the said twenty days to the Commissioner, the matter shall be referred to the Governor-in-Council; and the date of the receipt of such objection by the Commissioner shall be deemed to be the date of the reference; and the rules shall be established as settled by an order of the Governor-in-Council.

Amendment of special rules.

29. After special rules are established under this Chapter in any mine, the owner, agent or manager of such mine may from time to time propose in writing to the Inspector for the approval of the Commissioner any amendment of such rules or any new special rules, and the provisions of this Chapter with respect to the original special rules shall apply to all such amendments and new

rules in like manner, as nearly as may be, as they apply to the original rules. The Commissioner may from time to time propose in writing to the owner, agent or manager of a mine in which there are no special rules, and to the owner, agent or manager of a mine in which there are special rules, any new special rules, or any amendment to such special rules, and the provision of this Chapter with respect to a proposal of the Governor-in-Council for modifying the special rules transmitted by the owner, agent or manager of a mine shall apply to all such proposed special rules, new special rules, and amendments in like manner, as nearly as may be, as they apply to such proposal.

30. For the purpose of making known the special rules, if any, and the provisions of this Chapter, applicable to each class of mines as severally defined by the Commissioner, to all persons employed in and about each mine, an abstract of the Chapter applicable to each mine will be supplied on the application of the owner, agent or manager of the mine by the Commissioner, and which, with an entire copy of the special rules, (if any) shall be published as follows:

Special rules and  
abstract of Chapter  
published.

- (1.) The owner, agent or manager of such mine shall cause such abstract and rules (if any), with the name of the Inspector and the name of the owner, agent or manager appended thereto, to be posted up in legible characters in some conspicuous place at or near the mine where they may be conveniently read by the persons employed; and so often as the same become defaced, obliterated or destroyed, shall cause them to be renewed with all reasonable despatch.
- (2.) The owner, agent or manager shall supply a printed copy of the abstract and the special rules (if any) gratis to each person employed in or about the mine who applies for such copy at the office at which the persons immediately employed by such owner, agent or manager are paid.
- (3.) Every copy of the special rules shall be kept distinct from any rules which depend only on the contract between the employer and the employed.

If any owner, agent or manager fail to act in compliance with this section, he shall be guilty of an offence against this Chapter; but the owner or manager shall not be deemed guilty if he prove that he has taken all reasonable means, by enforcing the observance of this section, to prevent such non-compliance.



## CHAP. 8.

Defacing notices.

31. Every person who pulls down, injures or defaces any proposed special rules, notice, abstract or special rules, when posted up, in pursuance of the provisions of this Chapter with respect to special rules, or any notice posted up in pursuance of the special rules, shall be guilty of an offence against this Chapter.

Certified copy of special rules to be evidence.

32. The Inspector shall when required certify a copy, which is shown to his satisfaction to be a true copy, of any special rules which for the time being are established under this Chapter in any mine; and a copy so certified shall be evidence (but not to the exclusion of other proof) of such special rules, and of the fact that they are duly established under this Chapter, and have been signed by the Inspector.

## PENALTIES.

Other employees liable same as owners, &amp;c.

33. Every person employed in or about a mine other than an owner, agent or manager, who is guilty of any act or omission which in the case of an owner, agent or manager would be an offence against this Chapter, shall be deemed to be guilty of an offence against this Chapter.

Penalty for offences against this Chapter.

34. Every person who is guilty of an offence against this Chapter shall be liable to a penalty not exceeding, if he is an owner, agent or manager, eighty dollars, and if he is any other person eight dollars for each offence; and if the Inspector has given written notice of any such offence, to a further penalty not exceeding five dollars for every day after such notice that such offence continues to be committed.

Penalties for offences against section 10 of Chap. 5, of 1881.

Every person who may be guilty of a violation of any regulation made and published by the Board of Examiners appointed under the authority of section 8, Chapter 7, of the Revised Statutes, "Of Mines and Minerals," shall, for every day such violation shall continue, incur the penalties mentioned in the preceding part of this section.

In certain cases owner, &amp;c., not liable to prosecution.

35. No prosecution or other proceeding shall be instituted against the owner, agent or manager of a mine to which this Chapter applies for an offence under this Chapter, which can be prosecuted before a justice's court, except by the Inspector, or with the consent in writing of the Commissioner; and in case of any offence of which the owner, agent, or manager is not guilty, if he prove that he had taken all reasonable means to prevent the commission thereof, the Inspector shall not institute any prosecution against such owner, agent or manager, if satisfied that he had taken such reasonable means as aforesaid.

Penalties, &amp;c., recovered in name of inspector.

36. All penalties under this Chapter, and all moneys and costs by this Chapter directed to be recovered as penalties, may be sued for and recovered in the name of

the Inspector in the same manner and in the same courts CHAP. 8.  
of law in which ordinary private debts of a like amount  
are sued for and recovered.

37. Any complaint or suit made or brought in pursuance of this Chapter shall be made or brought within six months from the time when the matter of such complaint or suit came to the knowledge of the prosecutor. Proceedings  
within six  
months.

38. The owner, agent or manager may if he think fit be sworn and examined as an ordinary witness in the case where he is charged in respect of a contravention or non-compliance by another person. Owner, &c., can  
be witness.

39. Where a penalty is imposed under this Chapter for neglecting to send a notice of any explosion or accident or for any offence against this Chapter which has occasioned loss of life or personal injury, the Commissioner may (if he think fit) direct such penalty to be paid to or distributed among the persons injured and the relatives of any persons whose death may have been occasioned by such explosion, accident or offence, or among some of them. Application of  
penalties. of

Provided that such persons did not in his opinion occasion or contribute to occasion the explosion or accident, and did not commit and were not parties to committing the offence.

Save as aforesaid, all penalties imposed in pursuance of this Chapter shall be paid on receipt of the same into the Provincial Treasury.

#### MANAGERS, OVERMEN, AND BOARD OF EXAMINERS.

40. Every coal mine to which this Chapter applies shall, after the first of January, 1885, be under the control and supervision of a manager, and the owner or agent of every such mine shall nominate himself or some other person to be the manager of such mine, and shall send written notice to the Commissioner of the name and address of such manager. Manager.

41. The underground workings of every coal mine to which this Chapter applies shall be under the daily charge of an underground manager and overman holding certificates under this Chapter. Underground  
manager and  
overmen.

42. A person shall not be qualified to be a manager, underground manager or overman unless he be the holder of a certificate under this Chapter. Must hold cer-  
tificate.

43. If any coal mine to which this Chapter applies is worked for more than fourteen days without there being such a manager, underground manager or overman as is required by this Chapter, the owner and agent of such mine shall each be guilty of an offence against this Chapter. Offences.

## CHAP. 8.

## Proviso.

Provided that the owner of such mine shall not be guilty of an offence against this Chapter if he proves that he had taken all means by the enforcement of this section to prevent the mine being worked in contravention thereof.

In certain cases underground manager may be appointed manager.

If for any reasonable cause there is for the time being no manager of a mine qualified as required by this section, the owner or agent of such mine may appoint any person holding a certificate as underground manager under this Chapter to be manager for a period not exceeding two months, or such longer period as may elapse before such person has an opportunity of obtaining by examination a certificate as manager under this Chapter, and shall send to the Commissioner a written notice of the name and address of such manager, and of the reason of his appointment.

## Exemptions.

44. A mine in which less than thirty persons are generally employed underground, or of which the average daily output does not exceed twenty-five tons, shall be exempt from the provisions of this Chapter so far as relates to the appointment of a manager, unless the Inspector, by notice in writing served on the owner or agent, requires the same to be under the control of a manager; but the operations below ground shall be under the charge of persons holding certificates as underground managers and overmen under this Chapter.

Certificates issued by Commissioner.

45. All certificates for managers, underground managers and overmen shall be issued by the Commissioner upon the report of the Board of Examiners appointed under the provisions of the law of Mines and Minerals.

Board of Examiners to draw up rules, to conduct examinations, &c.

46. The Board of Examiners shall draw up rules for the guidance of their proceedings, and shall conduct examinations for granting certificates of competency under this Chapter, and may from time to time make, alter and revoke rules for the conduct of such examinations and for determining the qualifications of applicants; so, however, that in every such examination regard shall be had to such knowledge as is necessary for the practical working of coal mines in this Province, and for the determination of the qualifications of applicants for certificates of service as underground managers and overmen, and for the determination of the eligibility of holders of certificates of competency or service granted by an English Secretary of State or by any foreign government to receive equivalent certificates under this Chapter, and shall from time to time report to the Commissioner the names of the persons qualified to receive certificates, and shall do such other things as are necessary for the proper discharge of their duties under this Act; and the Governor-in-Council shall have power at any time

to alter and revoke any rules made by the Board of CHAP. 8.  
Examiners.

47. The fees and travelling expenses to be paid to the Board of Examiners, and the fees to be paid by applicants for certificates, shall be determined by the Governor-in-Council. Fees of examiners and applicants.

48. A register of the holders of certificates under this Chapter shall be kept at the office of the Commissioner by such person and in such manner as he may from time to time direct. Register of certificates.

49. Certificates of service as manager for the purposes of this Chapter may in the discretion of the Commissioner be issued by him to every person who satisfies the Board of Examiners that he has at any time within five years before the passing of this Chapter for a period not less than two years acted in the capacity of a manager of a coal mine. Certificates of service.

50. Persons holding certificates of service or competency granted by an English Secretary of State, or certificates of similar tenor granted by similar authority in any other country, may apply for corresponding certificates under this Chapter, and such certificates shall be granted by the Commissioner upon the recommendation of the Board of Examiners. Foreign certificates.

51. A certificate of service shall have the same effect in the colliery for which it was granted for the purposes of this Chapter as a certificate of competency granted under this Chapter. Certain certificates, effect of.

52. If at any time representation is made to the Commissioner by the Inspector or any other person that any manager, underground manager or overman holding a certificate under this Chapter is by reason of incompetency or gross negligence unfit to discharge his duty, or has been convicted of an offence against this Chapter, the Commissioner may if he think fit enquire into the conduct of such manager, underground manager or overman: and with respect to such enquiry the following provisions shall have effect:

(a.) The enquiry shall be public, and shall be held at such place as the Commissioner may direct. Enquiry to be public, and where held.

(b.) The Commissioner shall before the commencement of the enquiry furnish the person into whose conduct the enquiry is to be made with a statement of the case upon which the enquiry is instituted. Statement of case to be furnished to person accused.

(c.) The person into whose conduct the enquiry is to be held may attend the enquiry by himself, his attorney or agent, and may if he think fit be sworn and examined as an ordinary witness in the case. Person accused may attend by himself, his attorney or agent, and may be witness.

**CHAP. 8.** (d.) The Commissioner shall have power to cancel or suspend the certificate of the person into whose conduct the enquiry has been made if he find that he is by reason of incompetency or gross negligence, or of his having been convicted of an offence against this Chapter, unfit to discharge his duty.

Commissioner may require person accused to deliver up his certificate. (e.) The Commissioner may if he think fit require the person into whose conduct the enquiry is to be made to deliver up his certificate, and if such person fail without sufficient cause to the satisfaction of the Commissioner to comply with such requisition, he shall be guilty of an offence against this Chapter. The Commissioner shall hold the certificate so delivered up until the conclusion of the enquiry, and shall then either restore, cancel or suspend the same according to his judgment in the case.

Commissioner may summon witnesses. (f.) The Commissioner may also by summons under his hand require the attendance of all such persons as he thinks fit to call before him and examine for the purpose of the enquiry, and every person so summoned shall be allowed such expenses as would be allowed to a witness attending on a subpoena before a court of record.

Costs. (g.) The Commissioner may make such order as he thinks fit respecting the costs and expenses of the enquiry, and such order shall on the application of any party entitled to the benefit of the same, be enforced by any court of summary jurisdiction as if such costs and expenses were a penalty imposed by such court.

Cancellation or suspension of certificate to be recorded. (h.) When a certificate is cancelled or suspended in pursuance of this Chapter, the Commissioner shall cause such cancellation or suspension to be recorded in the register of holders of certificates.

Certificate may be restored. 53. The Commissioner may at any time if it is shown to him to be just so to do, renew or restore on such terms as he thinks fit any certificate which has been cancelled or suspended in pursuance of this Chapter.

Loss of certificate 54. Whenever any person proves to the satisfaction of the Commissioner that he has, without fault on his part, lost or been deprived of any certificate previously granted to him under this Chapter, the Commissioner shall cause a copy of the certificate to which the applicant appears by the register to be entitled to be made out and certified by the person who keeps the register and delivered to the applicant; and every copy which purports to be so made and certified as aforesaid shall have all the effect of the original certificate.

## MISCELLANEOUS.

## CHAP. 8.

55. In the working of coal and other minerals in submarine areas: Regulations as to working submarine areas.

- (1.) No submarine seam of coal or stratified deposit of other mineral shall be wrought under a less cover than one hundred and eighty feet of solid measures: Provided that the owner or lessee of any such area may drive passage-ways, to win the mineral to be wrought, under a less cover than one hundred and eighty feet, but not under less than one hundred feet of solid measures;
- (2.) A barrier of the mineral wrought of not less than fifty yards, twenty-five yards on both sides of the boundary lines of every lease, shall be left unwrought between the workings of every submarine seam;
- (3.) Where there is less than five hundred feet of solid measures overlying the seam or stratified deposit wrought, the workings of every such submarine area shall be laid off in districts of an area not greater than half of one square mile, and the barrier enclosing each separate district shall not be less than thirty yards thick, and shall not be pierced by more than three passage ways having a sectional area not greater than six feet by six feet;
- (4.) No district shall have its length when parallel to the general trend of the adjoining shore greater than one mile.
- (5.) A proposed system of working the mineral in each submarine area shall before work is commenced be submitted to and approved of by the Inspector; and no change shall be made in such approved system without the written sanction of the Inspector.

The opening of a new level or lift in a mine already working in a submarine area shall be deemed the commencement of a new winning in the meaning of this clause.

The owner, agent or manager of every mine to which this section applies, who transgresses or fails to comply with any provision of this section shall each be liable to a Penalties.

CHAP. 8. penalty not exceeding one thousand dollars, and if the offence complained of is continued or repeated after a written notice has been given by the Inspector to such owner, agent or manager of any such offence having been committed, the Supreme Court or a judge thereof, whether any other proceedings have or have not been taken, may upon application by the Attorney-General prohibit by injunction the working of such mine.

Minerals to be weighed.

56. All coal, iron ore, or other mineral extracted from mines leased by the Crown, on which royalty is payable, shall be weighed at the mine. The overrun allowed for rough weighing shall not exceed the true weight by one and a half per cent.

Proviso.

A competent person shall be appointed weigher by the owner or agent, who shall enter in a book specially kept for the purpose the weight of every weighing, and shall make a true report to the office at the mine of the weighings so made by him: provided always that it shall not be necessary to weigh every car load or tub of coals; but the Inspector may agree with the manager, owner or agent of any mine as to the weight by the gauge or average weight of such car loads or tubs: provided however that in no case shall a less quantity than every tenth car load or tub be so weighed as aforesaid. Every person who fails to comply with the provisions of this section shall be guilty of an offence against this Chapter.

Notices served personally or by post.

57. All notices under this Chapter shall be in writing or print, or partly in writing and partly in print; and all notices and documents required by this Chapter to be served or sent by or to the Commissioner or Inspector may be either delivered personally or served and sent by post by a prepaid registered letter; and if served or sent by post, shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post; and in proving such service or sending it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post.

Continuance of existing special rules.

58. The special rules which are in force in any mine under the sanction of an Inspector appointed under the Act entitled "An Act to consolidate the Statutes relating to Mines and Minerals," shall continue to be the special rules in such mine until special rules are established for such mine under this Chapter, and while they so continue, shall be of the same force as if they were established under this Chapter.

## SCHEDULE.

CHAP. 8.

FORM OF NOTICE OF EXPLOSION OR ACCIDENT TO BE SENT  
TO THE DEPARTMENT OF MINES.

Name of Mine.....  
Date .....

To the Honorable the Commissioner of Public Works and  
Mines, Halifax, N. S.:

SIR,—In pursuance of Chapter 8 of the Revised  
Statutes "Of the Regulation of Mines," I beg to give you  
notice that an <sup>(1)</sup> \_\_\_\_\_ has occurred at this mine, of  
which the following are the particulars:

Place where the accident occurred.....  
Date of the accident.....  
Character of the accident.....  
If from explosion, whether of gas, powder, or }  
any steam boiler ..... }  
Number, ages and names of persons killed.....  
Number and names of persons }  
injured seriously ..... }  
Number and names of persons }  
injured slightly <sup>(2)</sup> ..... }

Number and relation of persons dependent on persons  
killed.

I am, Sir,

Your obedient servant,

(Signature.)

---

(1) "Explosion" or "Accident."

(2) In case of any explosion.



## CHAP. 9.

## CHAPTER 9.

## OF THE CROWN LANDS.

- Commissioner. 1. The Attorney-General for the time being shall perform the duties of Commissioner of Crown Lands.
- Appointment of deputy surveyors. 2. The Governor-in-Council, upon the recommendation of the Attorney-General, may appoint one or more deputy surveyors in each county for the performance of such duties as may be required under the orders issued from the department. Every such deputy shall upon his appointment execute a bond to the Attorney-General with two sureties for the faithful discharge of the duties of his office, and shall thereupon receive a commission in the customary form to be approved by the Governor-in-Council. Dominion land surveyors may be appointed by the Governor-in-Council to be Deputy Crown Land Surveyors within the Province of Nova Scotia, without subjecting such surveyors to an examination, except as to their knowledge of the laws of the Province relating to the crown lands and their surveys.
- Bond.
- Dominion land surveyors may be appointed deputies.
- Deputy to receive and preserve county plan. 3. Each deputy appointed under this Chapter shall be supplied with a copy of the general plan of the county to which he is named, which he shall preserve with all other documents and plans connected with the lands of the county in some convenient place or office within the county where access can be had for information by the inhabitants—such plans, papers and documents to be held as the property of the Province, and to be transferred to his successor in office whenever appointed.
- Deputy to give information. 4. Such deputy shall give all necessary information to persons respecting the lands within his county whenever applied to for that purpose, and shall furnish any copies of plans that may be required, for which he shall be entitled to the following fees :
- Fees. Each search twenty cents.  
Copy of plan with necessary connection fifty cents, and larger plans as may be agreed upon.
- Instructions. 5. Instructions shall be furnished each deputy by the Attorney-General for his guidance in the discharge of his duties.
- Deputies to render quarterly accounts. 6. Every deputy surveyor at the expiration of each quarter of the year shall render his account for services, and transmit with the same a list or return of surveys to the Commissioner, accompanied by an affidavit in the following form :—

I, \_\_\_\_\_, Deputy Surveyor for the County of \_\_\_\_\_, CHAP. 9.  
do swear that the several lots of land described in the Affidavit.  
above list have been actually surveyed by me in accordance  
with the plans thereof; that all the corner bounds have  
been set up, and that the lines have been well marked.  
So help me God.

Sworn to before me at \_\_\_\_\_, this }  
\_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_. }  
\_\_\_\_\_, J. P. }

7. Subject to the provisions hereinafter contained, any <sup>Purchase, how</sup> person upon due application to the Attorney-General may <sup>made.</sup> become the purchaser of such crown lands as may be for sale upon making immediate payment therefor to the Treasurer, and upon the passage of the grant thereof shall be entitled to enter into possession, and not before, unless under authority in writing from the Attorney-General upon his report being approved.

. In case any dispute arises in reference to the appli- <sup>Proceedings in</sup> cation, purchase or granting or of the validity of any <sup>case of disputes</sup> grant of crown land under this section, it is hereby <sup>in reference to</sup> declared to be competent for the Attorney-General of <sup>application, pur-</sup> the Province, upon such terms as to security or otherwise <sup>chase, &c., of</sup> as he shall see fit to impose, upon request of the party <sup>Crown Lands.</sup> aggrieved, and on his relation, to file an information in the Supreme Court, setting out shortly the matter of complaint, and a summons shall thereupon issue, and proceedings shall be thereupon had as in an ordinary suit in equity for the purpose of determining the true rights of the parties with reference to such application, purchase or grant. And the said Supreme Court is hereby declared to have jurisdiction to entertain the same and to adjust the true rights of the parties.

The consent of the Attorney-General for the time being <sup>Fiat of Attorney-</sup> shall be expressed by indorsement of his fiat on the original <sup>General.</sup> information. In the cases where the fiat of the Attorney-General has not been indorsed on the original process prior to the issue of the information in any case, such neglect shall not be a fatal objection to the prosecution of of the suit, but upon such fiat being indorsed on the original information the suit shall proceed as in other cases.

8. If at the time of any application for land there was <sup>When grants</sup> any dwelling house on the land in which any person other <sup>may be declared</sup> than the applicant then and for a year previously had <sup>void.</sup> continually resided, or in case five acres at least of the land had been cleared or cultivated during such person's actual possession and had been for at least one year in his constant use, then unless such facts shall have been communicated to the Attorney-General before the passing

**CHAP. 9.** of the grant, the Governor-in-Council at any time within two years from the passing thereof may, if it shall appear proper so to do upon the report of the Attorney-General setting forth the facts, declare the grant to be vacated, and the same shall thereupon become void, and the grantee shall thereupon cease to have any interest in such land, which may be granted to any applicant as if it had never been previously granted.

**Governor-in-Council to decide questions of occupancy.** 9. It shall be in the discretion of the Governor-in-Council to decide upon all questions of the temporary occupation of crown lands for a shorter period than in the eighth clause; and the decision shall be binding on all parties who claim such possession upon their being notified previously to such decision in time to enable them to assert their claims.

**Chainmen sworn** 10. All surveyors appointed by the Attorney General as his deputies shall administer oaths to the chainmen before they proceed upon any survey, that they will well and truly perform the service according to the best of their skill and judgment under the directions they shall receive from such deputy surveyors.

**Surveyor in tracing township line, &c., may go on private lands.** 11. Any deputy surveyor when engaged in the duties of his profession may pass over, measure along, trace and ascertain the bearing of any township line or the line of any grant or other governing or side line, and for such purposes with his assistants may pass over the lands of any person whomsoever, doing no actual damage to such lands; and no action shall lie against such surveyor or his assistants for any act done under this section.

**Application for Crown Lands for lumbering purposes.**  
**Lots reserved for agriculture.** 12. When application is made for crown lands for lumbering or other purposes than for settlement, the Attorney General shall cause an accurate survey to be made of the tract applied for; and all lots reported fit for settlement shall be marked on the plan or survey and reserved for agricultural improvement.

**Price of Crown Lands.** 13. The price of all crown lands shall be, except as in this Chapter otherwise provided, forty dollars per hundred acres, and twenty dollars for a quantity of fifty acres or less whether the land is applied for for agricultural or lumbering purposes, except in cases where it shall be made to appear to the satisfaction of the Governor-in-Council that lands applied for are waste, unproductive, or covered with water, and that the applicant is prepared to expend money and labor in the draining, dyking and improvement of the same, in which case it shall be lawful to make a grant or lease of the same to the applicant on such terms as to the Governor-in-Council shall seem right

**Waste and unproductive lands**

provided that in all such cases the expenses of the survey shall be borne by the applicant. CHAP. 9.

14. The price of crown lands which have been improved and occupied for five years and upwards before the 10th day March, A. D. 1882, shall be twenty dollars for each hundred acres, or for each tract of less than one hundred acres, provided that no grant or grants shall be made to any one person at such reduced rate of a greater quantity of land than fifty acres in the whole, unless his improvements so made five years and upwards before the date aforesaid include the erection of a dwelling house, and unless at the time of the grant issuing to him he shall be residing on the land applied for and granted; and that no grant made under the provisions of this section shall exceed in extent one hundred acres.

15. It shall not be lawful to grant to any one person, partnership or corporation more than two thousand acres of crown lands for lumbering purposes as aforesaid, unless it be made to appear to the satisfaction of the Governor-in-Council that a greater area is necessary for the prosecution of the lumbering business, in which case the Governor-in-Council may by minute approve of the granting of a larger quantity than two thousand acres.

16. No grant of crown lands for agricultural purposes shall be made unless the application therefor shall be accompanied by an affidavit made by the applicant or party in possession before a justice of the peace that the same is intended solely for cultivation and improvement.

17. The lots so reserved for settlement and improvement shall be subdivided into lots as nearly as may be of one hundred acres; and it shall be lawful to grant three hundred acres to one applicant, but no more unless by special order of the Governor-in-Council.

18. The Attorney General with the sanction of the Governor-in-Council may order roads to be laid out to accommodate the settlers of such reserved lots, when it shall be deemed advisable so to do; and the settlers may be allowed to pay part of the price of such lands in labour on the opening and making of such roads under such inspection and supervision as the Governor-in-Council shall direct.

19. Persons in possession of crown lands for any term less than sixty years may be required to pay for the same and take grants thereof, if their possessions are not subject to encumbrance by mortgage, judgment or otherwise; and if such lands are claimed by others under mortgage, judgment or otherwise, the Attorney General may inquire into the respective claims, and make an arrangement of

CHAP. 9. the same with the approval of the Governor-in-Council, and decide to whom and under what condition grants shall pass; and if the persons in possession refuse or neglect to comply with such conditions and arrangements after receiving due notice thereof, they may be ejected at the suit of the Queen by the ordinary process of ejectment, as provided by the Practice of the Supreme Court for the time being in civil actions for the recovery of the possession of lands.

Penalty for cutting trees on ungranted lands.

20. If any grantee of such land so granted as aforesaid for lumbering purposes, or his assigns, shall cut down or cause to be cut down any trees growing on other ungranted lands in the vicinity of such land so granted to him, or shall purchase or receive any trees, timber, spars or logs cut on such ungranted lands by other persons knowing the same to have been cut on such ungranted lands, he shall on summary conviction thereof before a justice of the peace, according to the amount of the penalty claimed, forfeit and pay for each of such trees, logs, spars or pieces of timber not less than two dollars nor more than forty dollars.

Attorney-General shall notify parties who owe balances, to pay within three months.

21. In all cases where there remain balances due upon petitions of applicants for crown lands approved by the Governor-in-Council, it shall be the duty of the Attorney-General to notify the respective parties that unless within three months after notice served upon them they respectively pay the balances due by them their interest in such lands shall forthwith cease, and the same may be disposed of by the Attorney-General at public auction or private sale to the highest bidder, and out of the proceeds the balances due shall be deducted and the residue paid to the original applicants.

In default Attorney-General may dispose of lands.

Attorney-General may give three months' notice to quit.

22. The Attorney-General may give three months' notice to quit and deliver up possession of any lot or piece of ungranted land to any person in possession thereof or claiming any right or interest therein.

If possession is not given up party may be arrested.

23. If at the expiration of that time such possession be not given up and the party still remain in possession, it shall be lawful for the Attorney-General or any county surveyor to obtain a warrant from any justices of the peace to arrest the party upon whom such notice was served, upon oath being made of the service of such notice, and that such party still remains in possession or claims title to or an interest in the lands referred to in such notice.

Party so arrested may be committed to jail until possession be given up or bond given.

24. The party shall be arrested by any sheriff or constable under such warrant and committed to the county or district jail, there to remain until such possession be given up or until the party shall have entered into a bond

with two sufficient sureties to pay the costs of a prosecution in case a judgment should be given in favor of such prosecution. CHAP. 9.

25. When any such bond shall have been entered into the case shall be tried in a summary way in the Supreme Court. When bond given case tried in summary way.

26. On the trial thereof the title of the Crown shall not be contested, but the defendant shall be at liberty to prove in defence either that he or those under whom he claimed to hold possession has or have derived title from the Crown of the lands in question, or that he was in possession of the whole of the lands in dispute for at least twenty years. Title of Crown shall not be contested.

27. The court shall, if judgment be given in favor of the prosecution, order possession of the land to be delivered by the sheriff to the county surveyor on behalf of the Crown. Court may order possession to be given by sheriff.

28. The court shall also award to the successful party the costs as in summary cases, with such further costs as may be reasonable and as may be taxed and allowed by a judge. Costs.

29. Nothing herein contained shall be construed to affect or abridge any other legal remedy for obtaining possession of crown lands. Previous remedies not affected by this Chapter.

30. The bond mentioned in sections 24 and 25 shall be made to Her Majesty the Queen and shall be in the form of schedule A, and the same shall be sued on by the Attorney-General who shall be in office at the time the same is forfeited, or his successor for the time being. Bond, how to be made and sued on.

31. As soon as the bond is executed the cause shall be placed on the docket of the Supreme Court, and shall be tried at the next sittings or term thereof in the county where the lands lie, and no notice of trial shall be necessary. Regulating trial of cause.

32. When the court have given judgment a record, as in schedule B, shall be made and filed, and a copy registered in the office of the Commissioner of Crown Lands; and the court shall grant a writ of possession, the form of which shall be as in schedule C. Judgment.

33. Certain portions of the lands in the County of Shelburne purchased by the Government for the use of Icelandic immigrants, and assigned to such immigrants, who have failed to perform the conditions upon which such lands were assigned to them or who have deserted such lands, and also certain lands in various proclaimed gold districts throughout the Province which were re-vested in the Crown for gold mining purposes, for which purposes they are no longer required, are hereby vested in the Crown, to be disposed of as are crown lands, at such prices, however, as to the Governor-in-Council shall seem reasonable, reserving the rights of present or future lessees of mining areas therein. Certain lands which have been re-vested in the Crown to be disposed of as Crown lands.

CHAP. 9.

## SCHEDULES.

## A.

Know all men by these presents that we, A. B., of —, C. D., of —, and E. F., of —, are held and firmly bound to Her Majesty the Queen, her heirs, successors and assigns, in the sum of three hundred dollars, for which sum to be paid to the said G. H., and his successors in office we bind ourselves and each of us himself, our and each of our heirs, executors and administrators firmly by these presents, sealed with our seals and dated the — day of —, A. D. 18—.

Whereas the above bounden A. B. has been proceeded against under the provisions of Chapter 9 of the Revised Statutes, "Of the Crown Lands," to compel him to give up the possession of a certain lot of land claimed to be the property of our Sovereign Lady the Queen, and the above bounden A. B. is desirous of being discharged from custody on giving a bond with sureties under Section twenty-four of such Chapter, and the said C. D. and E. F. have agreed to become his sureties ;

Now the condition of the foregoing obligation is such that if the said A. B. shall well and truly pay all costs of the prosecution that he may be adjudged to pay under the provisions of the said Chapter, then these presents are to be void, otherwise to remain in full force and virtue:

Signed, sealed and delivered	}	A. B.	[L. S.]
in presence of		C. D.	[L. S.]
J. J.		E. F.	[L. S.]

## B.—Record.

In the Supreme Court at —, on the — day of —, A. D. 18—.

Our Sovereign Lady the Queen took proceedings under Chapter 9 of the Revised Statutes, "Of the Crown Lands," against A. B. for withholding possession of a certain lot of land situate, lying and being at —, in the County of —, and described as follows : that is to say—

And the said A. B. appeared and defended the possession. Therefore it is considered that our Sovereign Lady the Queen do recover possession of the premises above mentioned, with the appurtenances, and also \$— for her costs of suit.

## C.

## CHAP. 10.

In the Supreme Court at \_\_\_\_\_, 18—.  
 SS. Victoria, by the Grace of God, &c.

To the Sheriff of \_\_\_\_\_, or his Deputy :

Greeting :

Whereas certain proceedings were taken in the Supreme Court at \_\_\_\_\_ against A. B. for withholding the possession of a certain lot of Crown Land situate at \_\_\_\_\_, described as follows: (*description*), and the said A. B. was convicted of wrongfully holding the same against the true intent and meaning of Chapter 9 of the Revised Statutes, "Of the Crown Lands," and it was considered that our Sovereign Lady the Queen should recover the possession of the said lot of land from the said A. B., and that the said A. B. should pay to our said Lady the Queen the sum of \_\_\_\_\_ for costs of prosecution :

Therefore we command you, without delay, to cause our said Lady the Queen to have the possession in the said lot of land with the appurtenances ; and we also command you that you cause to be levied of the goods and chattels of the said A. B. in your bailiwick the sum of \_\_\_\_\_, and for want of goods and chattels of the said A. B. to satisfy the sum aforesaid we command you to take the body of the said A. B. and him commit to our jail in \_\_\_\_\_, there to remain until he pay the said sum or be discharged according to law.

Issued the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

\_\_\_\_\_, Prothonotary.

L. M., Attorney of Plaintiff.

## CHAPTER 10.

## OF TRESPASSES TO CROWN PROPERTY.

1. No person shall cut down or remove any trees or wood of any description on any crown lands, or open any mine or dig or raise any minerals belonging to the Crown, or remove, use, injure or destroy any trees, wood, lumber or minerals, being Crown property, without license from the Governor or other legal authority, under the penalty of not less than eight dollars nor more than eighty dollars for each offence in addition to the value of any such trees, lumber, wood or minerals which shall have been cut down,

No person to cut wood, open mines, &c., without license.

Penalty.



**CHAP. 10.** raised or removed, and in addition to any damages committed on the land of the Crown—the amount of which value and damages shall be found by the jury. The prosecution may be in the name of the Queen, and on conviction the court shall determine the amount of penalty, and judgment shall pass for such penalty and also for the value and damages aforesaid and costs of suit.

Prosecution, how conducted, &c.

Sheriffs, chief surveyors, &c., empowered to protect Crown property.

2. The sheriff and the chief surveyor of each county and such other person as the Governor-in-Council may see fit to appoint are severally empowered and required vigilantly to protect the lands, timber and minerals belonging to the Crown in their respective counties, and to prevent encroachments and trespasses on the lands and mines of the Crown and the unlawful removal of trees, timber, lumber and minerals of the Crown.

Their duties, powers, &c.

3. It shall be their duty respectively to seize trees and wood illegally cut and the lumber made thereout and minerals illegally raised on the lands of the Crown in their respective counties wherever the same may be found, and also to follow and seize the same in any other county to which they may have been removed, and also to seize in their respective counties trees, timber, logs and lumber of the Crown illegally cut or made and minerals of the Crown illegally raised in any other county and removed into their said counties; and they shall have power to use all suitable and necessary means for guarding the same until condemnation, and to authorize persons to act in assistance of and under them.

Proceedings after seizure.

4. Immediately after seizure the seizing officer shall report the facts to the Attorney-General, and shall obey his instructions as to further proceedings.

Proceedings when parties concerned in trespass are known.

5. If any one or more of the parties concerned in cutting or raising or in removing or having in possession the property seized shall be known, a justice of the peace either of the county where the property seized was cut or raised or where it was seized shall, on the application of any of the said officers or persons acting by authority of the Attorney-General, issue a notice in the form in schedule A against any one or more of the parties so known, and service on any one or more of them personally or by leaving a copy of the notice at his or their last place of abode shall be sufficient to bring on a trial and for the condemnation of the property. If the parties be not known a copy of the notice shall be posted on the court house door or in some other public place at least ten days before trial. Should no claim be made at the time and place mentioned in the notice the property shall be thereupon forfeited; and in case of claim two justices shall then

Proceedings when parties are not known.

and there or at some other adjourned time and place hear evidence and adjudicate, and either condemn the property or order it to be released with costs. CHAP. 10.

6. The sentence of condemnation may be in the form in schedule B, and a copy thereof certified by one of the justices shall be delivered to the officer or person who seized the property, who shall report the facts to the Attorney-General, and shall sell or otherwise dispose of the property as he may direct. Sentence of condemnation-form of proceedings thereunder.

7. In case of sale the gross proceeds shall be forthwith remitted to the Attorney-General, who shall pay the same to the Treasurer, who after the charges shall have been approved by the Provincial Secretary, shall pay the necessary expenses for guarding and preserving the property, the usual costs to the justices and witnesses and other necessary expenses, and shall then pay one-half the nett proceeds to the officer or persons aforesaid who seized and prosecuted to condemnation the said property. When from any cause the property seized shall not realize an adequate remuneration the Attorney-General may with the approval of the Governor-in-Council make such adequate compensation to the seizing officers and persons employed by them and the witnesses as under the circumstances may be proper. Disposal of proceeds in case of sale.

8. An appeal may be had from the judgment of the justices to the Supreme Court. If the claimant be the appellant he shall make the affidavit and give the security as required in cases of appeal. The appeal shall not stay the sale, and if it be determined in favor of the claimant he shall be entitled to the property if not sold or to the gross proceeds if sold and his costs, to be paid by the Attorney-General and charged in his account. When property does not realize enough to cover expenses.

9. Any person who shall assault or obstruct any officer in the execution of his duty under this Chapter or any person in his aid, or who shall wilfully remove, cut, injure, convert or set loose anything seized as aforesaid, shall pay a fine to the Queen not exceeding four hundred dollars nor less than eight dollars, at the discretion of the court where prosecuted, and in default of payment after conviction such person shall be imprisoned in the county jail for a period not exceeding one year nor less than ten days, at the like discretion. Appeal, proceedings thereunder, &c.

10. Any person impleaded for seizure or prosecution under this Chapter may plead this Chapter and give the special matters in evidence. And if the judge shall certify probable cause of seizure or prosecution the claimant shall not recover any costs, nor shall the person who made the seizure be liable to any indictment or suit on account Penalty for obstructing officers removing property, &c.

Privileges of persons impleaded for seizure under this Chapter.

CHAP. 10. thereof, and if any suit or prosecution be brought against any person on account of such seizure and judgment shall be given against him, and the judge or court shall certify that there was probable cause for the seizure, then the plaintiff besides the thing seized or its value if sold as aforesaid shall not recover more than four cents damages nor any costs of suit, nor shall the defendant be fined more than twenty cents. But a party whose property shall have been seized may, notwithstanding such certificate of probable cause, take possession of such property if the same shall not have been sold or disposed of, or if sold or disposed of may recover the actual value thereof from the seizing officer if the same shall not be paid within one month after demand on him in writing setting forth the particulars and amount of such claim.

Trees, timber or logs illegally cut on Crown lands may be seized and sold.

11. All trees, timber or logs found cut upon the crown lands without authority or license of the Government may be seized by the deputy surveyors of the county or such persons as may be appointed for the protection of crown lands, and such seizure shall be forthwith reported to the Attorney-General, who may direct the sale thereof without proceeding to condemnation,—the proceeds of such sale to be remitted to the Attorney-General, to be applied as directed by section 7 of this Chapter.

Proceeds sent to Attorney-General.

Action, where to be brought.

12. Every action or suit or prosecution brought for a violation of the provisions of this Chapter shall be brought in the county where the offence shall have been committed.

Trespassers when not entitled to jail limits, &c.

13. If any person shall illegally cut down or injure or remove any tree growing on any crown lands or on land the property of any person or corporation and shall be sued therefor, or an action of replevin shall be brought in respect of the same, and judgment shall be given against him, he shall not be entitled to jail limits or to the benefit of any act for the relief of insolvent or imprisoned debtors until he shall have been imprisoned one day for each and every dollar of the amount of damages and costs for which he shall have been imprisoned.

Not to conflict with Chapter 7.

14. Nothing herein contained shall be construed to contravene or conflict with Chapter 7, "Of Mines and Minerals."

## SCHEDULES.

## CHAP. 11.

## A.

Whereas a quantity of (*describe the articles*) have been seized as Crown property, illegally obtained,

These are to give notice that two justices of the peace will attend on the — day of —, at — o'clock in the — noon, at —, to hear cause why the same should not be declared to be the property of the Crown.

Given under my hand and seal at —, this — day of —, A. D. 18—.

A. B., J. P.

## B.

Be it remembered that (*describe the property*) having been seized as Crown property illegally obtained, and prosecuted under the provisions of the Chapter, "Of Trespases to Crown Property," the same are hereby adjudged and declared to be the property of the Crown pursuant to the said Chapter.

Given under our hands and seals at —, this — day of —, A. D. 18—.

A. B. (seal.)

C. D. (seal.)

## CHAPTER 11.

## OF THE PUBLIC RECORDS.

1. The books, papers and records of all public offices, provincial and county, are hereby vested in Her Majesty the Queen and her successors. Vested in Her Majesty.

2. If any person shall wrongfully take, withhold or retain possession of any public document, book, record, writing or other paper, he may be proceeded against for the recovery of the same in a summary manner. Parties taking or retaining them may be proceeded against.

3. Upon grounds laid by affidavit before the Supreme Court or any judge thereof, an order at the instance of one of the law officers of the Crown may issue at the suit of Her Majesty, requiring the parties in whose custody such documents, books, records, writings or other papers are, to give up the same to the proper custodian, or as therein directed. Mode of procedure.

## CHAP. 12.

Order to be in dis-  
cretion of court  
or judge.  
Costs.

Appeal.

4. It shall be in the discretion of the court or judge granting the order whether an order absolute or an order *nisi* shall be first granted; and costs shall follow when an order is obtained, unless otherwise directed.

5. Any party feeling aggrieved by the order of a single judge may, upon filing with the prothonotary in Halifax a bond to Her Majesty in a sum to be named by a judge of the Supreme Court for security for costs, appeal from the decision of the judge to the court *in banco*, where the whole matter may be heard and disposed of as such court may decide.

## CHAPTER 12.

## OF THE LEGISLATIVE LIBRARY.

Appointment of  
Nova Scotia Li-  
brary Commis-  
sion.

1. The Library of the Nova Scotia Historical Society shall be amalgamated with the Legislative Library of Nova Scotia, and the regulation and management of the joint collection and any additions that may be made thereto is hereby vested in a commission of nine persons to be called the Nova Scotia Library Commission, of whom the Lieutenant-Governor of the Province for the time being shall *ex officio* be one, and the remainder of whom shall be appointed annually, one half by the Nova Scotia Historical Society and the other half by the Governor-in-Council.

Lieutenant-Gov-  
ernor, ex-officio  
President.

2. The Lieutenant-Governor for the time being shall be *ex officio* the President of the Commission.

On failure to ap-  
point, duties to  
devolve on whom

3. Should the Nova Scotia Historical Society at any time fail to appoint any or all of the commissioners whom said society are hereby authorized to appoint, the rights and powers vested by this Chapter in the commission shall devolve upon the other members of the commission.

Appointment of  
Librarian, &c.

4. The librarian shall be appointed by the Governor-in-Council and shall be such person as the commissioners shall nominate, and shall hold office during good behaviour.

Commissioner  
may make by-  
laws, &c.

5. The commissioners may make by-laws from time to time for the regulation and management of the library and prescribing all matters necessary for the control thereof, but such by-laws shall not go into force until approved by the Governor-in-Council.

Annual report  
to be submitted  
to Legislature,

6. The commission shall make an annual report of the expenditure, the general state of the library, and on all such matters in connection therewith as may be required by the Governor-in-Council, which report shall be laid upon the table of each branch of the Legislature during the session.

## TITLE IV.

### OF PROVINCIAL OFFICERS.

#### CHAPTER 13.

##### OF CERTAIN PUBLIC OFFICERS, THEIR SALARIES AND DUTIES.

1. There shall be allowed to the several officers Salaries of public officers. hereinafter mentioned, to be paid quarterly out of the public funds, income and revenue, the following yearly salaries:—

To the Provincial Secretary two thousand four hundred dollars, and to his first clerk or Deputy Secretary fourteen hundred dollars :

To the Attorney-General sixteen hundred dollars :

To the Cashier sixteen hundred dollars :

To the Commissioner of Public Works and Mines two thousand dollars ; to the Chief Clerk of Mines one thousand dollars ; to the Chief Clerk of Works one thousand dollars ; to the Secretary of the Board of Public Charities twelve hundred dollars :

To the First Clerk in the Crown Land office one thousand four hundred dollars ; to the additional clerk one thousand dollars :

To the Provincial Engineer not more than three thousand dollars :

To the Private Secretary of the Lieutenant-Governor for the time being twelve hundred and fifty dollars.

2. The Provincial Secretary shall be Treasurer of the Province, and shall give bonds for the faithful performance of the duties of his office in sixteen thousand dollars, with two sureties in eight thousand dollars each ; and his clerk, called the Cashier, shall give bonds in four thousand dollars with two sureties in two thousand dollars each for the faithful discharge of his duties. Provincial Secretary to be Treasurer of the Province and to give bonds. Cashier to give bonds.

3. The Provincial Secretary, the Attorney-General, and the Commissioner of Public Works and Mines shall be members of the Provincial Administration for the time being. To be members of administration.

4. The Provincial Secretary shall, in addition to the other duties of his office, examine and check from time to time as they shall come in all accounts of public receipts Duties of Provincial Secretary.

CHAP. 13. and expenditures of every kind and description; and no account of any public expenditure whatsoever for road work, public buildings, education or otherwise shall be paid by the Cashier until the same shall have been carefully examined and certified to be correct, or any mistake or error therein pointed out and rectified by the Provincial Secretary, or in case of his absence or indisposition, by his Deputy or first clerk.

Duty as Treasurer.

5. It shall be his duty as such Treasurer to receive all the revenues or public moneys collected in or paid to the Province from whatever source derived, and deposit the same in such bank or banks, to his credit as Provincial Treasurer, as the Governor-in-Council may from time to time direct, which moneys shall be withdrawn from said banks only upon a cheque signed by the Cashier and countersigned by the Provincial Secretary or his Deputy, —and no payment from the public revenue shall be made except by warrants drawn by the Provincial Secretary on the Cashier.

How moneys are to be drawn.

Filing of accounts, &c.

6. The Governor-in-Council may direct what accounts shall be filed in the office of the Provincial Treasurer, and in what form the books shall be kept, and which of such books shall be open to inspection, and by whom and under what circumstances.

Vouchers.

7. The accounts so examined and certified as aforesaid under the hand of the Provincial Secretary, or in case of his absence or indisposition under the hand of his Deputy or principal clerk, shall be necessary vouchers previous to the issue of a warrant for the payment of the sums therein expressed or for the payment thereof under any general warrant previously issued therefor.

Salary of Treasurer.

8. The Provincial Secretary shall not be entitled to receive any salary as Provincial Treasurer.

Treasurer's accounts.

9. The Cashier shall furnish quarterly accounts of all sums received and paid by him, to be examined and checked by the Provincial Secretary, and such quarterly accounts shall be collected and formed into one general account, to be presented by the Provincial Secretary to the General Assembly in every year within the first twenty days in each session, and to be examined and audited by a joint committee appointed by the Legislative Council and House of Assembly as heretofore.

Governor may give directions for management of office.

10. It shall be competent for the Governor-in-Council to direct from time to time which of the public accounts shall be filed in the office of the Provincial Secretary, and in what form the books to be opened thereat shall be kept, and also from time to time on the report of the Provincial Secretary to issue such orders for the more economical

expending of the public moneys by the taking of contracts CHAP. 13.  
 after due advertisement or by such other guards and  
 provisions as may appear most judicious for the checking  
 of any abuse and the more vigilant and faithful husbanding  
 of the public moneys.

11. The Commissioner of Public Works and Mines Duties of Com-  
 missioner of Pub-  
 lic Works and  
 Mines.  
 shall perform all the duties required of him in the chapters  
 relating to Mines and Minerals, and in addition thereto  
 shall be invested with the legal title to and have the  
 superintendence and management of the Provincial Building  
 and grounds and all other buildings and property belonging  
 to the Province and now under the care or management of  
 such Commissioner of Public Works and Mines, or which  
 may be placed under his care by the Provincial Government.

12. The Governor-in-Council may make such regula- Governor-in-  
 Council may  
 make regula-  
 tions.  
 tions for the superintendence and management of the  
 public works mentioned in the next preceding section as  
 may seem judicious, provided that no greater expense is  
 incurred for such superintendence and management than  
 has been heretofore sanctioned or granted by the Legislature.  
 Such regulations shall be laid before the Legislative  
 Council and Assembly within ten days after the opening  
 of the next session after they shall be made, and they shall  
 be subject to the revision of the Legislature.

13. The Commissioner of Public Works and Mines for Commissioner of  
 Works and Mines;  
 Queen's Printer.  
 the time being shall be the Queen's Printer for the Province,  
 and he shall discharge without salary or emolument all the  
 duties which are assigned to the Queen's Printer or which  
 have heretofore appertained to that office.

14. The Governor-in-Council shall appoint as clerk to Appointment,  
 duties, &c., of  
 clerk.  
 the Commissioner of Public Works and Mines a person to  
 assist him in the discharge of the duties imposed on the  
 Commissioner under this Chapter. Such clerk shall have  
 had practical experience in the business of printing to such  
 an extent as will enable him to discharge all the duties  
 heretofore devolving on the Queen's Printer. The person  
 so appointed shall be an officer of the Department of  
 Works and Mines, and shall have and perform such duties  
 as may be assigned to him by law or by order of the  
 Lieutenant-Governor-in-Council. He shall be Secretary for  
 the Commissioners of Public Charities, and shall also have  
 and discharge such other duties as may be assigned him by  
 the Commissioner of Public Works and Mines. His duties  
 shall be performed under the direction and supervision of  
 the Commissioner of Public Works and Mines.

15. It shall be the duty of any Queen's Printer to Duties of Queen's  
 Printer.  
 cause to be printed and published for the Provincial  
 Government, under his superintendence, the official Gazette



CHAP. 13. of the Province, to be known as the Royal Gazette, the Statutes of Nova Scotia, the Journals of the Legislative Council and House of Assembly, and all such official and departmental and other reports, books, forms, documents and other papers as are required to be printed at the expense of the Province, and he shall perform all such other duties as shall from time to time be assigned to him by Order-in-Council, and whatever is printed under his superintendence by authority of this Chapter shall be held to be printed by him.

Clerk of Assembly to furnish Queen's Printer with certified copies of Acts.

16. The Clerk of the Assembly shall furnish the Queen's Printer with a certified copy of every Act of the Legislature of Nova Scotia as soon as the same has received assent, or if the Bill has been reserved so soon as the assent thereto has been proclaimed in the Province.

Queen's Printer to transmit printed copies to certain parties.

17. The Queen's Printer shall immediately after the close of the session of the Legislature, or so soon after as may be practicable, deliver or transmit by post or otherwise in the most economical mode the proper number of printed copies of the Acts of the Legislature to the parties hereinafter mentioned, that is to say :

To the members of the Legislative Council and of the Assembly respectively such numbers of copies of each as may from time to time be directed by any joint resolution of both houses, or in default of such resolution such numbers as shall be directed by any order of the Governor-in-Council ; and to such public departments, administrative bodies and officers throughout the Dominion of Canada, as may be specified in any order to be for that purpose made from time to time by the Governor-in-Council.

Proviso.

Provided that when any bill receives assent during and before the termination of any session of the Legislature, the Queen's Printer shall, on instruction to that effect from the Provincial Secretary, cause distribution to be made of such number of copies thereof to the same parties and in the like manner as is hereinbefore provided in regard to the acts of any session.

Provincial-Secretary to furnish list of public departments, &c.

18. The Provincial Secretary shall within fifteen days after the close of each session of the Legislature transmit to the Queen's Printer a list of all the public departments, administrative bodies and officers to whom such copies are to be transmitted as aforesaid, and shall also from time to time as occasion requires furnish him with copies of all orders in Council made under the provisions of this Chapter.

Remaining copies of Acts.

19. If after the distribution of such printed Acts any copies remain in the hands of the Queen's Printer, he may deliver any number thereof to any person by order of the Governor, on notice thereof by the Provincial Secretary.

20. The Statutes shall be printed in small octavo form, CHAP. 13.  
 on fine paper, in small pica type, fifty-one ems by thirty-Printing of Statutes.  
 two ems, including head notes and marginal notes in  
 nonpariel, such notes referring to the year and chapter of  
 previous statutes whenever the text amends, repeals or  
 changes the enactments of former years; and shall be  
 half-bound in paste-board covered with paper, with backs  
 and corners of best sheep-skin and lettered; and they shall  
 be arranged for distribution in such manner as the  
 Governor-in-Council may deem expedient.

21. The Queen's Printer shall before the opening of Report to be made by Queen's Printer.  
 each session of the Legislature make a report in triplicate  
 to the Governor (to be by him laid before both houses of  
 the Legislature within fifteen days after the opening of  
 such session), shewing the number of copies of the Acts of  
 each session which have been printed and distributed by  
 him since the last session, and the departments, adminis-  
 trative bodies, officers and persons to whom the same have  
 been distributed, the number of copies delivered to each  
 and under what authority, and the numbers of copies of  
 the Acts of each session then remaining in his hands; and  
 containing also a detailed account of the expenses by him  
 actually incurred in carrying into effect the five preceding  
 sections of this Chapter; to the end that provision may be  
 made for defraying the same after such account has been  
 duly audited and allowed.

22. Publication of proclamations, official and other Publication in Royal Gazette.  
 notices, and of all such matters whatsoever as may be from  
 time to time desired by the Governor-in-Council, shall be  
 made in the *Royal Gazette* of this Province; and all  
 advertisements, notices or publications which by any act  
 or law in force in this Province are required to be given  
 by the Provincial Government or any department thereof,  
 or by any sheriff or other officer, or by any municipal  
 authority, or by any officer, person or party whomsoever  
 shall be given in such *Royal Gazette*, unless some other  
 mode of giving the same be directed by law.

23. All copies of proclamations and official and other Copies in Royal Gazette prima facie evidence of originals.  
 notices, advertisements and documents printed in the *Royal*  
*Gazette*, and all copies of the Statutes of this Province  
 caused to be printed for the Government by the Queen's  
 Printer, shall be *prima facie* evidence of the originals and  
 of the contents thereof; and all copies purporting to be so  
 printed shall be held to be so, until proof to the contrary.

24. The Governor-in-Council may from time to time Regulations concerning Royal Gazette.  
 prescribe the form, mode and conditions of the publication  
 of the *Royal Gazette*, and designate the public bodies,  
 officers and persons to whom it shall be sent without charge,

CHAP. 13. and regulate the price of subscription thereto, and the charges to be paid for the publication of notices, advertisements and documents for parties other than the Government; and all sums payable for such subscriptions and charges shall be paid in advance to the Queen's Printer. Until otherwise ordered by the Governor-in-Council the form, mode of publication and price of the *Royal Gazette* and the charges for advertising therein shall remain as at present.

Quarterly re-  
turns of adver-  
tisements in  
Royal Gazette.

25. The Queen's Printer shall make quarterly returns under oath to be sworn before a commissioner of the Supreme Court, of the moneys received by him for subscriptions to the *Royal Gazette* and for advertising therein, and pay over the sums so received to the Provincial Treasurer within twenty days after the expiration of the quarter for which any such return is made.

Contracts for  
printing.

26. The printing, binding and other like work to be done under the superintendence of the Queen's Printer, as mentioned in the fifteenth section, shall be done and furnished under contracts to be entered into under the authority of the Governor-in-Council in such form and for such time as the Governor-in-Council shall appoint, and after such reasonable public notice or advertisement for tenders, as the Queen's Printer, with the approval of the Governor-in-Council, may deem advisable; and the lowest tenders received from parties of whose skill and resources, and of the sufficiency of whose sureties for the due performance of the respective contracts the Governor-in-Council shall be satisfied, shall be accepted; provided always that the foregoing portion of this section shall not apply to any government printing declared to be of a confidential character by an order in Council, as hereinafter provided.

Proviso.

Printing of Jour-  
nals of Legisla-  
ture.

27. The Journals of both houses of the Legislature shall be printed on fine paper, in large octavo form and in small pica type, fifty-five ems by thirty-five ems, with marginal notes in nonpariel, and shall be bound similarly to the Statutes. The Journals of the two houses shall be uniform with one another, and all departmental and other reports, and other documents to be laid before either house, or ordered to be printed by either house and intended to be bound with the Journals of such house, shall also, with the exception of the marginal notes, be in all respects uniform with such Journals. In addition to the number of copies of such reports or documents required for other purposes there shall be printed a sufficient number of copies for binding with the Journals of both houses as appendices or otherwise. It shall be the duty of the

Queen's Printer to see that the provisions of this section CHAP. 13. are fully complied with.

28. It shall be the duty of the Queen's Printer to assist the Government in preparing advertisements, specifications and contracts in connection with public printing, and to compel contractors to carry out fully the terms and provisions of all such specifications or contracts. Further duties of Queen's Printer.

29. It shall also be his duty to check and audit all accounts for advertising rendered by newspaper proprietors against the Provincial Government, or any department or officer thereof. Ditto.

30. No money for printing, binding or other such work done shall be paid out of the Provincial Treasury without a certificate from the Queen's Printer that the work has been properly done, and that the party doing the same is lawfully entitled to receive the amount certified to. If the Queen's Printer shall sign any false or fraudulent certificate under this section, he shall, in addition to any other penalty to which he may by law be subject, forfeit and pay a sum equal to the amount mentioned as payable in such certificate. Money for printing to be paid only on certificate of Queen's Printer.

31. Whenever it shall appear to the Governor-in-Council that in the interest of the public any printing should be regarded as of a confidential character, the Governor shall by order in Council authorize such printing to be done by the Queen's Printer at the public expense, or to be done under his superintendence at fair prices without tender, such prices to be specified in such order, and a separate account of all such work, with details of the quantities, rates charged, amounts paid and the names of the parties performing the work, shall be kept by the Queen's Printer and included in his annual report. Printing of confidential character.

32. The Queen's Printer shall keep an accurate record of all transactions of his office, and furnish a report of the same annually to the Provincial Secretary, by whom the same shall be submitted to the Legislature. Queen's Printer to keep record of his office, &c.

33. The Queen's Printer shall also prepare annually an estimate of the sums which will probably be required to be provided by the Legislature for all public printing during the financial year, which estimate shall be transmitted to the Provincial Secretary for his approval, and shall be laid before the Legislature with the other estimates for the year. To prepare estimates, &c.

34. The expenses to be incurred under the foregoing provisions of this Chapter shall be paid out of such moneys as may be appropriated for the purpose by the Legislature and accounted for (except as herein otherwise provided) Expenses under this Chapter.

**CHAP. 13.** in like manner as other moneys expended for the public service.

Queen's Printer or Clerk to Board of Public Charities not to be interested in tenders, &c. 35. The Queen's Printer or Clerk to Board of Public Charities shall not be interested directly or indirectly, by himself or his partner in business, in the result of any tender for printing or other work to be done under this Chapter.

Governor-in-Council make regulations. 36. The Governor-in-Council shall by orders in Council make all such rules and regulations not inconsistent with this Chapter, as may be deemed advisable for the direction of the Queen's Printer; and every such order shall be submitted to the Legislature within fifteen days after the opening of the session next after the passing thereof.

Queen's Printer to give security. 37. The Queen's Printer shall before entering upon the duties of his office give securities to the satisfaction of the Governor-in-Council in the sum of five thousand dollars for the faithful discharge of such duties.

Governor-in-Council may appoint engineer. His duties. 38. It shall be lawful for the Governor-in-Council to appoint an engineer, whose time and services shall be devoted exclusively to his duties as a provincial officer. He shall perform such duties in connection with railways and other public works and matters as the Governor-in-Council may from time to time direct.

Governor may open cash account in banks and borrow money. 39. The Governor-in-Council may cause a cash account to be opened at one or more of the banks in the City of Halifax, and may borrow and receive from such banks such sums of money as may be necessary for the use of the Province, in such amounts as may from time to time be required, under such conditions and upon such terms, stipulations and agreements for the payment and repayment of such moneys, and for the management of such accounts as by the Governor-in-Council may be established, prescribed and directed, with the consent of the directors of the banks; or otherwise may borrow and receive from any other persons, corporations or companies a sum not to exceed one hundred and twenty thousand dollars, at the lowest interest at which such loan can be effected.

May borrow from other persons, &c. 40. The money may be drawn and received from time to time in such sums and under such restrictions and regulations as may be prescribed by the Governor-in-Council with the consent of the lenders thereof.

Moneys, how drawn. 41. For the repayment of all moneys borrowed under this Chapter, and for the final payment and discharge of the balance which shall be remaining due and unpaid on the final closing of such accounts with such lenders with interest, the public funds, moneys and credits of this Province are hereby pledged and rendered liable.

Public funds, &c., pledged for re-payment.

42. An account of all sums received, paid, borrowed or repaid under this Chapter, with the dates of the receipts, payments, loans and repayments respectively, shall be laid before the joint committee of the Legislature appointed to examine the public accounts, together with the drafts and vouchers relating to the same, at each session.

CHAP. 13.

Account and vouchers to be laid before Legislature.

43. Every member of the Executive Council of this Province not residing in the City of Halifax, and not in the receipt of a salary as head of a department, shall receive from the Provincial Treasury allowances for his attendance in Council and for his travelling expenses as follows :

Allowance and travel of members of the Executive Council.

(a.) For actual attendance in Council the sum of four dollars per day, including the days necessarily occupied in travelling to and from Halifax, or other place in which Council may be convened.

(b.) A sum sufficient to indemnify him for his actual outlay for necessary travelling expenses in going to and returning from meetings of the Executive Council.

44. Every member of the Executive Council acting as delegate or otherwise engaged in public business requiring his presence from home in other parts of the Province or abroad, shall receive from the Provincial Treasury a sum sufficient to indemnify him for his actual outlay for reasonable expenses while so acting or engaged in the public service ; and if he is not in receipt of a salary as head of a department he shall receive in addition the sum of four dollars for each day so given to the public service

Indemnity as delegate.

45. No member of the Executive Council shall receive any indemnity or allowance for travelling to or attending any meeting of the Council that may be held while the Provincial Parliament is in session.

While Parliament in Session.

46. Notwithstanding the provisions of the two next preceding sections the Governor-in-Council may by Order-in-Council authorize the payment from the Treasury of a greater sum for services to any member of the Executive Council who has been sent on delegations to any place out of Canada on the public service.

Greater sum, how payable.

47. All claims for allowances and expenses under the four next preceding sections of this Chapter shall be made in writing, stating particulars of claim, signed by the claimant and filed in the office of the Provincial Secretary.

Claims, how to be made.

48. When bonds are required to be given by a public officer, whether appointed under the provisions of this Chapter or of any other act of the Local Legislature, by the Governor-in-Council or otherwise, they shall be taken in Her Majesty's name when not otherwise directed.

Bonds of public officers

## CHAP. 13.

49. Sureties to any such bond may at any time give to the Provincial Secretary notice of their desire to withdraw from liability thereunder, and in such case the liability of the sureties for any act committed or dereliction of duty after the expiration of three months from the receipt of such notice shall cease. Principals shall in such cases be required to furnish new security in the same manner as if bonds had not been previously executed.

Officers appointed during pleasure.

50. All officers now appointed or hereafter to be appointed by the Governor, whether by commission or otherwise, shall remain in office during pleasure only, unless otherwise expressed in their commissions or appointments.

## TITLE V.

OF COUNTIES, DISTRICTS AND TOWNSHIPS,  
AND THEIR OFFICERS.

## CHAPTER 14.

## OF THE BOUNDARIES OF COUNTIES, DISTRICTS AND TOWNSHIPS.

1. The boundary lines of counties, municipal districts and townships are confirmed as at present established. Boundary lines confirmed.

2. Whenever it shall be made satisfactorily to appear to the Governor-in-Council that the lines and bounds of any county, district or township are uncertain and require to be run out, or where the traces of such lines or bounds have disappeared, and it shall be necessary to establish the same anew, it shall be lawful for the Governor-in-Council to authorize the Attorney-General to appoint a surveyor to perform such work and to set up permanent marks and boundaries upon such lines. When lines uncertain Governor may order survey.

3. Before such surveyor shall proceed to perform that duty notice shall be given by the Attorney-General or the surveyor to the Warden of each county or district, and at any regular or special meeting of the Municipal Council thereafter to be holden such council shall nominate one or more persons to represent the interests of such county, district or township in determining the true course of such county, district or township lines, and the fixing the necessary marks and bounds thereof, who shall make and return a plan thereof. Notice to Warden, &c., before survey.

4. The cost of such survey shall be paid out of the Provincial Treasury, and the expenses of the nominees for each county, district and township shall be a municipal charge. Municipal Councils, duty of.

5. The report of the majority if concurred in by the surveyor shall decide the line, but in case the surveyor shall not concur therein his report with that of those agreeing with him, if any, and also the report of those differing from him shall be submitted to the Attorney-General, whose duty it shall thereupon be to decide and establish the line between the respective counties, districts or townships. Costs of survey, how paid, expenses of nominees a municipal charge.

Line, how decided.



CHAP. 15.

## CHAPTER 15.

## OF SHERIFFS.

Appointment of Sheriff.

1. The Governor-in-Council shall from time to time, as occasion may require by commission under the Great Seal of the Province, appoint and commission a fit and proper person to the office of Sheriff of each county, and shall in like manner fill up any vacancies as they occur, and every Sheriff so appointed shall hold office during good behaviour.

Oath of office.

2. Before entering upon his duty every Sheriff shall subscribe the following oath:

I, A. B., do solemnly swear that I will truly serve the Queen in the office of Sheriff for the county of \_\_\_\_\_ and promote Her Majesty's profit in all things which belong to my office as far as I legally can; I will truly to the best of my skill and judgment execute the Laws and Statutes of the Province, and will in all things act uprightly in my office for the honor of the Queen and the good of her subjects.

Security to be given by Sheriff.

3. The Governor-in-Council may from time to time by order in Council fix and determine the amount of the security to be given by each Sheriff as hereinafter mentioned, but such an amount shall be in no case less than four thousand dollars nor more than ten thousand dollars for each Sheriff, and not less than two thousand nor more than five thousand dollars for each surety named in the bond hereinafter mentioned, and until such Order-in-Council be made, the amount of the security to be given by each Sheriff shall be four thousand dollars for the Sheriff and two thousand dollars for each surety.

Duplicate bond, how given.

4. Every Sheriff shall before he is sworn into office and within one month after his appointment execute and enter into a joint and several bond in duplicate with two sureties for such amount respectively, as may be fixed and determined by Order-in-Council in that behalf as aforesaid, or until such Order-in-Council is made for the sum of four thousand dollars for the Sheriff and two thousand dollars for each surety, which said duplicate bond may be in the form of schedule A to this Chapter, or to the like effect, and to each of said duplicate bonds respectively shall be attached an affidavit made by each of the sureties therein named respectively, in the form of schedule B to this Chapter or to the like effect.

Bonds filed transmitted, &c.

5. One of the duplicate bonds with the affidavit thereto attached shall within the periods hereinbefore limited respectively be filed in the office of the prothonotary of the county, for which filing the prothonotary shall be entitled

to a fee of fifty cents, and the other duplicate bond with CHAP. 15. the affidavit attached to the same, and an affidavit of the filing of said first mentioned duplicate and affidavits in the office of such prothonotary as aforesaid shall within the same period be transmitted to the office of the Provincial Secretary, and by him be submitted for the approval of the Governor-in-Council.

6. In case the said bond is approved of by the Governor-in-Council it shall be filed in the office of the Provincial Secretary, and notice of such approval shall be given to the Sheriff, but in case said bond is disapproved of, the Provincial Secretary shall forthwith give notice to the Sheriff of such disapproval, and in such case the said Sheriff shall within one month thereafter furnish and transmit another such bond in lieu of the bond so disapproved of as aforesaid, to the satisfaction of the Governor-in-Council. Proviso as to bonds.

7. The sureties named in any bond so disapproved of as aforesaid shall not be discharged from liability by such disapproval, but shall be and continue liable for any defaults or misfeasances made, done or committed previous to the approval by the Governor-in-Council of any security that may be furnished in lieu of the same. Liability of sureties.

8. The Governor-in-Council may at any time require any Sheriff to renew his bond or securities or to furnish others in lieu of the same, as to him may appear expedient for the protection of the interests of the Crown or of parties to legal proceedings, which new or substituted bond or securities the Sheriff shall be bound to transmit to the Provincial Secretary within three months after notice of the Order-in-Council in that behalf. Renewal of bond.

9. Every renewed or substituted bond or security shall be in the same form and executed and accompanied by the same formalities and affidavits and filed in the same manner and subject to the same approval as the original bond or security. Proviso as to renewal.

10. In case any new security is given or substituted as aforesaid the former securities shall only be liable for or on account of defaults and misfeasances suffered or committed by the Sheriff previous to the perfecting of the new security and the approval thereof by the Governor-in-Council, and not as to any subsequent default or misfeasance. Liability of first securities.

11. Every Sheriff shall give notice in writing to the Provincial Secretary of the death, discharge, bankruptcy, insolvency or residence out of the Province of any surety or person bound with him in any such security forthwith after the fact comes to his knowledge, and in every such case such Sheriff shall furnish the security of a new surety, Death, &c., of surety provided for.

CHAP. 15. to be approved of as aforesaid, in lieu of the surety so dying, being discharged, becoming bankrupt or insolvent, or residing out of this Province, and shall complete, file and transmit to the Provincial Secretary the necessary bond or security and affidavits in that behalf within one month after such notice.

Surety may give notice, &c.

12. Any person who has become surety for any Sheriff, and who is no longer disposed to continue such responsibility, may give notice thereof to such Sheriff and to the Provincial Secretary, and in such case the said Sheriff shall furnish the security of a new surety in lieu of the surety so giving notice, and shall complete, file and transmit the necessary bond or security and affidavits in that behalf to the Provincial Secretary within one month after such notice, and all accruing responsibility on the part of the person giving such notice shall cease upon and after the perfecting and approval of the new security.

Liability of Sheriff as to sureties.

13. Any Sheriff who neglects to give and furnish any of the securities or to give any notice required by this Chapter within the period hereinbefore in that behalf respectively limited, shall be liable to forfeit his said office, and his appointment and commission shall be void from and after the time when the Governor-in-Council declares the same to be avoided under this Chapter, but such avoidance shall not annul or make void any act or order or other act, matter or thing done by such Sheriff during the time he actually held office.

Forfeiture may be remitted.

14. The Governor-in-Council may remit the forfeiture in any case in which the failure to give the security or to perfect or transmit the instruments required by this Chapter within the periods hereinbefore limited respectively in that behalf has not arisen from the wilful neglect of the Sheriff, and if it appears to the Governor-in-Council that such respective periods are in any case insufficient in consequence of any accident, casualty, loss of papers in the transmission thereof, illness or other particular circumstance, the Governor-in-Council may allow such further period, not in any case exceeding two months, for perfecting and transmitting such securities as to him may appear reasonable and proper.

Provision as to approval of securities.

15. The Governor-in-Council may approve of any security or securities, although the same may not have been perfected and transmitted respectively within the time limited by this Chapter, and in such case the office or commission of the Sheriff shall not be deemed to have been avoided by such default, but to have remained in full force and effect, and such securities when approved of as aforesaid shall be held and construed as valid and

effectual in the same manner and to the same extent as if they had been perfected and approved respectively within the time limited by this Chapter. CHAP. 15.

16. No neglect, omission or irregularity in giving or renewing any bond or security required by this Chapter, nor in observing the formalities hereinbefore prescribed or any of them, shall vacate or make void any such bond or security or discharge any party or surety from the obligations thereof. Surety when not discharged.

17. Any person may examine the bond of the Sheriff and his sureties, and the prothonotary in possession thereof shall on demand deliver to any person who desires the same a copy thereof on payment of the following fees : Examination of bond.

- For search and examination of bond.... \$ 25
- For copy of bond..... 1 00

18. The said sureties shall be liable to indemnify the party or parties to any legal proceeding against any damage sustained by any such party or parties in consequence of the Sheriff's neglect, default, misconduct or misfeasance in his office, and the Sheriff shall be joint defendant in any action to be brought upon such bond. Sureties to indemnify suitors.

19. Any person sustaining any damage by reason of such omission, default, neglect, misconduct or misfeasance of any Sheriff may bring and maintain an action upon the said bond in the name of the Queen for such omission, default, neglect, misconduct or misfeasance without special leave obtained therefor, and be entitled to the proceeds with costs, and the defendant shall be entitled to costs if judgment be given in his favor, and such action shall not be barred by reason of any prior recovery for the benefit of the same party upon the same bond or of any judgment rendered for the defendant in any prior action upon the same bond, or by reason of any other action being then depending upon the same either for the benefit of the same party or for the benefit of any other party for any other distinct cause of action, and the Sheriff shall forthwith after the commencement of any such action give notice of the same to the Provincial Secretary. Action on bond, how brought, &c.

20. If upon the trial of any action upon any such bond or security it is made to appear that the party for whose benefit the suit is brought is entitled to recover, and that the amount which such surety has paid or has become liable to pay as hereinafter mentioned is not equal to the full amount for which he became surety, the Court, after deducting from such full amount the sums which he has so paid or become liable to pay as aforesaid, shall render judgment against him for any sum not exceeding the balance of the sum for which he became surety. Court may render judgment.

## CHAP. 15.

Surety, how discharged.

21. Where any such surety actually and *bond fide* and of his own proper moneys and effects has paid or become liable by virtue of a judgment or judgments recovered against him upon his said bond to pay an amount equal to the amount specified on the said bond for which he became surety, such bond as to him shall be deemed to be discharged and satisfied, and no other or further sum shall be recovered against him.

Court may stay proceedings.

22. It shall be competent for any court of record in Nova Scotia, upon proof to the satisfaction of the court of such payment or liability, in a summary manner and at any stage in the cause by stay of proceedings or otherwise, to prevent the recovery against any such surety of any further sum than the sum specified in his bond and for which he may have become surety.

Endorsement on execution, &c.

23. Upon every writ of execution under a judgment recovered on such bond the plaintiff or his attorney shall by an endorsement upon the writ direct the coroner or other officer charged with the execution of said writ to levy the amount thereof upon the goods and chattels of the Sheriff in the first place, and in default of goods and chattels of the Sheriff to satisfy the amount then to levy the same or the residue thereof on the goods and chattels of the other defendant or defendants in such writ, and so in like manner with any writ against lands and tenements upon a judgment on any such bond.

Continuance of Sheriff's liability.

24. Notwithstanding a Sheriff may have forfeited his office and become liable to be removed therefrom by reason of his not having complied with the provisions of this Chapter, he shall nevertheless continue in his office to all intents and purposes, and the liabilities of himself and his sureties shall remain, until a new Sheriff has been appointed and sworn into office.

Penalty for false return.

25. Any Sheriff who wilfully makes any false return upon any writ or a warrant of execution directed to him and placed in his hands for execution shall be liable to forfeit his office.

Books to be kept by Sheriff.

26. Every Sheriff shall keep in his office the following books, viz :

(1.) Process books, in which shall be entered a memorandum of every process other than writ of execution or writs in the nature of writs of execution received by the Sheriff, the court out of which the same issued, the date of the receipt, the nature of the process, the names of the parties thereto, the attorney by whom issued, the date of the return and the nature of the return made thereto, or what was thereunder or therewith done respectively.

(2.) Execution and attachment books for goods and lands respectively, in which shall be entered a memorandum of every writ of execution and attachment, the court out of which the same issued, the names of the parties thereto, the attorney by whom issued, the date of return and the nature of the return made thereto, or what was done thereunder and therewith. CHAP. 15.

27. It shall be the duty of every Sheriff to supply himself with the books in the next preceding section mentioned, and the costs thereof shall be paid by the county of which he is Sheriff. Cost of books,  
how paid.

28. For the entry of every process and of every writ of execution or attachment in such books respectively as aforesaid, the Sheriff shall receive a fee of ten cents, to be charged by him as costs in the cause in the ordinary way. Fee for entries  
in books.

29. The plaintiff or other party at whose suit or instance a process is issued and the attorney who issues the same shall be severally liable to pay to the Sheriff his taxable fees for executing such process. Liability to  
Sheriffs for costs.

30. Every Sheriff shall at the end of each calendar year render an account on oath to the Provincial Secretary of all forfeitures and debts of the Crown levied by him, with the names of parties paying the same, and any Sheriff who shall neglect or delay more than two months after the end of each year to render such account as aforesaid shall forfeit eighty dollars to the use of the Crown. Accounts, how to  
be rendered.

31. In an action brought against a Sheriff or jailer or other officer for an escape under an execution in a civil suit the court or judge shall not be bound to find for the whole amount for which the prisoner was committed, but shall find a verdict for the plaintiff for such sum only as they shall think right and proper under all the circumstances of the case, unless it shall appear on the trial that the escape was connived at or the officer guilty of negligence, and in no case shall they find for more than the amount for which the prisoner was committed. Proviso in ac-  
tions for escape.

32. Sheriffs shall return all writs to them directed with the amount of their fees thereon endorsed and the several items thereof specifically set forth, otherwise the same shall not be taxed or recoverable. Sheriffs shall endorse upon every writ returned by them an account of their doings thereon, and when and how executed, and the amount collected on all writs of execution. Return of writs.

33. No Sheriff or Deputy Sheriff shall hold a commission as justice of the peace, and all such commissions held by Sheriffs or Deputy Sheriffs are hereby declared to be null and void, and any Sheriff or Deputy Sheriff acting as a Not to be justice  
of the peace.

CHAP. 15. justice of the peace in violation of this section shall for each offence forfeit the sum of eighty dollars.

Books, &c., Gov-  
ernment prop-  
erty.

34. All books, accounts, records, papers, writs, warrants, process and other matters and things in the possession or under the control of any Sheriff by virtue of or appertaining to his office as Sheriff, shall be the property of the Government of this Province, and the same and every of them shall immediately upon the resignation, removal from office or death of any such Sheriff be by the party in whose possession or control they may come or happen to be, handed over to and taken possession of by the successor in office of such Sheriff, or such person as the Governor may appoint to receive the same.

Duties of outgo-  
ing Sheriff.

35. Upon the removal of any Sheriff from his office or upon his resignation of the same and upon the appointment of his successor the outgoing Sheriff, or in the event of the death of any Sheriff the Deputy Sheriff, jailer or other person having charge of the same, shall forthwith make out and deliver to the new and incoming Sheriff a true and correct list and account under his hand of all prisoners in his custody and of all writs and process in his hands not wholly executed by him, with all such particulars as shall be necessary to explain to the said incoming Sheriff the several matters intended to be transferred to him, and shall thereupon hand over and transfer to the care and custody of the said incoming Sheriff all such prisoners, writs and process, and all records, books and matters appertaining to the said office of Sheriff.

Duties of incom-  
ing Sheriff.

36. The incoming Sheriff shall thereupon sign and deliver a duplicate of such list and account to the Sheriff going out of office or to the deputy sheriff, jailer, or other person where the previous Sheriff has deceased, to whom the same shall be a good and sufficient discharge of and from all the prisoners therein mentioned and transferred to the incoming Sheriff and from the further charge of the execution of the writs, process and other matter therein contained without any writ of discharge or other writ whatsoever; and the said incoming Sheriff shall thereupon stand and be charged with the said prisoners and also with the execution and care of the said writs, process and other matters contained in the said list and account as fully and effectually as if the same writs and process had been handed over by indenture and schedule.

Penalty for ne-  
glect, &c.

37. In case any outgoing Sheriff, or in the case of the death of the former Sheriff, any such Sheriff, deputy sheriff, jailer, or other person refuses or neglects to make out, sign and deliver such list and account as aforesaid, and to hand over the process aforesaid in manner aforesaid, every such

Sheriff or deputy sheriff, jailer, or other person so neglect-  
ing and refusing shall be liable to make such satisfaction  
by damages and costs to the person aggrieved, as such  
person sustains by such neglect or refusal. CHAP. 15.

38. Any Sheriff after resigning office or removal from  
office, or his heirs, executors or administrators, shall or may  
at any and at all time or times thereafter have the right  
and be at liberty to have access to, search and examine into  
any or all accounts, books, papers, writs, warrants and  
papers of whatever kind, and all other matters and things  
which were formerly in the possession of him, the said  
Sheriff, before his resignation or removal, and which at the  
time of making or requiring to make such search or  
examination are in the possession or control of the  
succeeding Sheriff, or the then Sheriff of the county, free of  
all costs, charges and expenses. Right of search-  
ing books, &c.

39. Chapter 44 of the Acts of 1882 is continued in  
force notwithstanding anything in this Chapter contained. Chap. 44 Acts  
1882 continued  
in force.

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## SCHEDULES.

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### A.

#### PROVINCE OF NOVA SCOTIA.

*Know all Men by these Presents, That We, ——— of  
——— in the County of ———, Esquire, and ——— are  
held and firmly bound unto our Sovereign Lady VICTORIA,  
Queen of the United Kingdom of Great Britain and  
Ireland, Her Heirs and Successors, in the penal sum of  
Eight Thousand Dollars, current money of the said Province,  
that is to say:——— the said ——— as Principal in the  
sum of Four Thousand Dollars ———, and the said ———  
and ——— as Sureties for the said ——— in the sum of  
Two Thousand Dollars each, to be paid to our said Lady  
the Queen, Her Heirs or Successors, to which payment, well  
and truly to be made, we severally bind ourselves, our  
Heirs, Executors and Administrators, firmly by these  
Presents Sealed with our Seals.*

*£ s* Dated the ——— day of ——— in the year of Our  
Lord One Thousand Eight Hundred and ———, and in  
the ——— year of Her Majesty's Reign.

*The Condition of the foregoing Obligation is such, That  
whereas the said ———, according to the form and in  
pursuance of the Statute in such case provided, is nominated  
and appointed to serve the office of Sheriff for the County*



CHAP. 15. of ———, if therefore the said ——— during his continuance in the said office of Sheriff, by himself or his sufficient deputy or deputies (for whom he and his said sureties shall be answerable), shall well and faithfully serve our said Lady the Queen and her people in the said office of Sheriff of the County of ———, and shall duly observe and execute all such laws and ordinances as the High Sheriffs in the several Counties in England are subject to; and shall also obey and execute all such Statutes and Acts of the said Province of Nova Scotia as relate to the said office of Sheriff in the said Province of Nova Scotia; and shall faithfully and diligently, to the best of his skill, serve and execute all writs and processes of every kind, which shall be from time to time directed to him; and shall faithfully and truly, and without delay, return the same; and shall pay over on demand to the person or persons entitled to demand the same all and every sum of money which shall come to his hands by virtue of the said office of Sheriff, and in all other respects conduct himself as a faithful officer, then this obligation to be void, otherwise to remain in full force and virtue.

*Signed, Sealed and Delivered }  
in presence of }*

—————  
CERTIFICATE OF EXECUTION.

I, ———, one of Her Majesty's Justices of the Peace for the County of ———, certify that ——— of ——— in the County of ——— duly made oath before me this day that he is a subscribing witness to, and was present at the execution of the foregoing Bond, and that he saw the same signed, sealed and delivered by ——— and ——— therein named.

Dated at ——— this ——— day of ——— A. D. One Thousand Eight Hundred and Eighty ———.

—————  
B.

*Affidavit of Justification.*

COUNTY OF ———

To WIT:

I, A. B., (follow the description given in the Bond), (one of the sureties in the annexed bond named), do make oath and say as follows:

1. That I am seized and possessed to my own use of real estate in Nova Scotia of the actual value of ——— (the amount for which the party making the affidavit is liable

by the bond), over and above all charges upon or CHAP. 16.  
incumbrances affecting the same.

2. The said real estate of (describe property.)

3. I am worth (the amount for which the party has become liable by the bond), dollars over and above my just debts.

4. My Post Office address is as follows: (Insert the name of the Post Office.)

A. B.

Sworn before me at — in the County of — the  
— day of —, 188—.

P. T.,

Judge of the County Court or J. P. for the County of —.

## CHAPTER 16.

### OF PROTHONOTARIES AND CLERKS OF THE CROWN.

1. The Governor-in-Council shall appoint and commis- Appointments,  
how made.  
sion one person to be Prothonotary of the Supreme Court and Clerk of the Crown in every county, as vacancies shall occur.

2. The Prothonotaries shall on or before the first day Prothonotaries  
to make return  
of fees on oath.  
of February in every year make returns under oath into the Provincial Treasurer's office of the fees received by them.

3. The Prothonotaries and Clerks of the Crown to be Prothonotaries,  
&c., to give  
bonds.  
appointed as aforesaid shall give bonds in such sums and with such securities as may be directed by the Governor-in-Council, conditioned for the performance of the duties of their office.

4. The Prothonotaries throughout the Province shall Prothonotaries  
to act as Clerks  
of the Crown.  
issue subpoenas in Crown cases and perform all such other duties as may appertain to the office of Clerks of the Crown.

5. Prothonotaries and Clerks of the Crown may Deputy Prothono-  
taries and  
Clerks of Crown,  
how appointed  
and in what  
cases.  
appoint deputies to act for them in cases of illness or temporary absence from their respective counties. Such deputies shall perform the duties of their principals during such absence or illness, and such principals shall be responsible for the acts of their deputies.

6. Such deputies before entering on the duties of their Deputies to file  
bond.  
office shall file, in every case, a bond in the sum of two thousand dollars with two sureties for the faithful performance of the duties of such office.

CHAP. 17. 7. Whenever it shall appear to a judge of the Supreme Court that any Prothonotary and Clerk of the Crown is unfit for the performance of his duty from any cause whatever, at any sittings of the Supreme Court at which such judge shall preside, it shall be lawful for such judge to appoint some fit and proper person to perform the duty of such Prothonotary and Clerk of the Crown during such sittings, whose acts and proceedings shall be as valid and effectual as if performed by such Prothonotary and Clerk of the Crown.

Judge to appoint Prothonotary and Clerk of the Crown in certain cases.

## CHAPTER 17.

### OF CORONERS.

How appointed and sworn. 1. Coroners may be appointed by the Governor-in-Council, and shall be sworn into office before a judge of the Supreme Court or the Warden of the County.

Inquisitions, when and how returned. Clerk of Crown to file without fee and give certificate. 2. Coroners shall return their inquisitions to the Clerk of the Crown for the county at or before the then next sittings of the Supreme Court. The clerk shall file the same without fee and give the Coroner a certificate containing the date of the inquisition and the date of the filing of the same.

Juries, how summoned. Inquisitions may be held on Sunday. 3. Coroners shall, either personally or by a constable furnished by them with a precept, summon a jury of the inhabitants of the county to attend inquisitions when requisite at a time and place appointed, and if necessary may hold inquests on a Sunday.

Fees of Coroner, jury and constable. 4. Upon the certificate of the Clerk of the Crown being filed with the County Treasurer the Coroner shall be entitled to receive from the Municipal Treasury ten dollars in full for each inquisition, two dollars and fifty cents thereof to be paid to the jury and fifty cents to the constable for their fees.

Fee for medical men, &c. 5. Medical men examined before a Coroner's jury shall be entitled to five dollars each, to be paid by the Municipal Council, together with travelling fees at the rate of five cents per mile, but no such charge shall be made unless the witness shall be called by the direction of a majority of the jury, and such charge shall include a *post mortem* examination if made. Before any claim on a county for such charges shall be allowed a certificate from the Coroner that such examination was required by a majority of the jury shall be produced.

6. If there be any further necessary or extraordinary <sup>CHAP. 18.</sup> charges on an inquest or burial besides those mentioned in the preceding sections of this Chapter, they shall be defrayed by the county or district. The Municipal Treasurer shall pay the same immediately upon the production of the certificate of the Clerk of the Crown, such charges having been first duly attested to by the Coroner before a justice of the peace as being reasonable and having been necessarily incurred. Extra charges, how defrayed.

7. In the absence of the Coroner an inquisition may be held before a justice, who shall be entitled in such case to the same fees as a Coroner. Justice may act instead of Coroner.

8. Coroners shall return lists in triplicate of the inquests held by them, together with the findings of the juries, to the office of the Provincial Secretary on or before the tenth day of January in every year, under a penalty of twenty dollars. Returns to Provincial Secretary

## CHAPTER 18.

### OF SPECIAL CONSTABLES AND PRESERVING ORDER.

1. In case of riot, tumult or disturbance, or illegal acts of any kind, accompanied with force or violence, or of a just apprehension thereof occurring or being committed in any place other than the City of Halifax or any incorporated town, any three of Her Majesty's justices of the peace may by writing under their hands appoint any number of special constables to assist in preserving peace and order. In case of riot, &c., three justices may appoint special constables.

2. Such special constables shall act under the direction of the senior magistrate who has signed their appointment. To act under senior magistrate

3. Any justice of the peace may swear in such special constables to the faithful discharge of their duty. How sworn.

4. The appointment of such special constables shall continue in force for the period of fourteen days from the date of such appointment, unless sooner revoked by the justices by whom they were appointed. Appointment of special constable to be in force 14 days.

5. In case of disorder or disturbance which may occur at any public meeting or assemblage of persons elsewhere than in the City of Halifax or any incorporated town, any justice of the peace, upon request of the chairman of such Power of justice to verbally appoint constables in case of disturbance at public meetings.

CHAP. 18. meeting or of three or more freeholders, may verbally appoint and swear in special constables who shall aid in restoring and preserving peace and order at such meeting or assemblage.

Constables re-  
fusing to serve.

6. Any person who may be appointed a special constable under the last five sections and shall neglect or refuse to be sworn into office, shall be liable to a penalty of eight dollars.

Appointment  
and pay of po-  
lice constables.

7. The Municipal Council may appoint one or more police constables to act for the preservation of the public peace and order and for the enforcement of the laws against crime, vice and immorality in such townships or districts as they shall see fit, and may make regulations as to the duties to be performed by them, and may provide for their remuneration by salary or otherwise.

Funds, how  
raised.

8. The funds necessary for such purpose shall be raised by assessment upon the districts wherein such officers are appointed, in the same manner as other municipal rates.

Resisting con-  
stable, how pun-  
ished.

9. Any person who shall by force resist any constable or special constable in the performance of his duty shall, on summary conviction thereof before a justice of the peace, forfeit the sum of not less than two dollars nor more than twenty dollars; and in default of payment shall be imprisoned in the county gaol for a period not exceeding thirty days.

Municipal Coun-  
cil may appoint  
chief constable.

10. The Municipal Council in any municipality may annually appoint a chief constable for such municipality, and fix a salary of not less than one hundred dollars a year, to be paid to him out of the municipal treasury.

Such constable  
to give bonds.

11. Before entering upon the duties of his office he shall give a bond to Her Majesty in the sum of two thousand dollars, with two sufficient sureties, for the faithful performance of the duties of his office.

Powers and du-  
ties of chief con-  
stable.

12. Such chief constable shall have power and it shall be his duty to serve and execute all process issued by justices of the peace in civil and criminal matters, and to execute all warrants for municipal rates to him delivered to be served or executed; and he shall have power to perform all acts and duties now incumbent on constables in criminal and civil cases.

Constables of  
municipality to  
assist chief con-  
stable.

13. All constables of the municipality when so required by the chief constable shall be obliged to assist him in the performance of his duties, and any constable refusing to so assist him, without reasonable and just excuse, shall on summary conviction thereof before a justice of the peace, be liable to a fine of not more than twenty dollars, and in default of payment shall be imprisoned in the county gaol for a period not exceeding sixty days.

14. The chief constable shall have authority to appoint one or more deputies under him, and to remove such deputies and appoint others in their stead at pleasure; and such deputies shall have the same authority to serve and execute process as the chief constable has under this Chapter; and the chief constable shall be responsible for the acts of his deputies in serving and executing such process.

CHAP. 19.

Chief constable may appoint deputies.

15. In every municipality in which such chief constable shall have been appointed there shall be paid to the justice issuing a writ of summons, in addition to the fees now required by law, by the party suing in a civil suit where the amount sued for does not exceed twenty dollars, ten cents, and where the amount sued for exceeds twenty dollars twenty cents, which shall be taxed as costs in the cause; and every justice of the peace shall make a semi-annual return under oath on the first day of June and the first day of December in each year to the Municipal Treasurer of the names of the plaintiff and defendant in every such suit, and the fees paid to the justice under this section during the next preceding half year, and at the same time pay over to the Municipal Treasurer the sums to him so paid.

Additional fees for issuing summons in municipalities appointing such chief constable.

16. Nothing herein contained shall prevent any other constable from serving and executing any legal process or from doing any other acts which before the passing of this Chapter he could lawfully serve, execute or do.

Nothing herein contained to prevent other constables from performing their usual duties.

17. The chief constable shall be entitled to the same fees on service and execution of process as an ordinary constable, except that his fees for travel on all such process shall be computed from the residence of the chief constable to the residence of the defendant, when necessarily done.

Fees of chief constable.

18. No justice of the peace shall be appointed a chief constable.

Justice of the peace not to be chief constable.

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## CHAPTER 19.

### OF THE PROTECTION OF CONSTABLES.

1. Before any action shall be brought against a constable, police or other officer or any person acting in his aid, and for anything done in obedience to a warrant under the hand and seal of a justice, mayor or alderman, a demand in writing of the perusal and copy of such warrant, signed by the person making the same shall be served upon him

a Demand of perusal and copy of warrant to be served upon constable, &c., before action brought.

CHAP. 20. personally or left at his usual place of abode for the space of six days.

If justice not made party when notice complied with defendant shall have judgment.

Proceedings where action against justice and constable.

Limitation of action.

2. If after such demand and a compliance therewith an action be brought against such constable or other officer or person acting in his aid without making the justice a party thereto, on the proof of such warrant upon the trial judgment shall be given for the defendant, notwithstanding any want of jurisdiction in the justice. If the action be brought against the constable or other officer or person acting in his aid jointly with the justice, then on proof of such warrant judgment shall be given for the constable or other officer or person acting in his aid; and if a verdict pass against the justice the plaintiff shall recover costs to be taxed so as to include the costs he may be liable to pay to the other defendant.

3. No action shall be brought against a constable or other officer or person acting in his aid unless the same be commenced within six months next after the cause of action shall have accrued.

## CHAPTER 20.

### OF JAILS AND OTHER COUNTY BUILDINGS.

Jails, court houses, &c., how erected and repaired.

Spirituos liquors forbidden within jail limits

Penalties for a second conviction.

Prosecution to be by clerk of license.

Liquors prescribed by a physician

1. County or district jails, court houses and session houses may be erected and repaired by order of the municipal councils in the respective municipalities.

2. If a jailer or other person shall sell or deliver or permit any person to sell or deliver to any prisoner or other person any spirituos liquors in any jail or jail yard, or within the limits of any jail, or in any room or part of a house or building where a jail is kept, or shall bring or suffer such liquors to be brought therein to be used by any prisoner there, such person shall forfeit a sum not exceeding twelve dollars.

3. Every jailer on a second conviction therefor shall, in addition to paying a second fine, be disqualified for office and be forthwith dismissed.

4. Prosecutions shall be in the name of the clerk of the licenses for the municipality, and on information given him it shall be imperative upon him to sue for such fine.

5. Nothing herein contained shall prevent the introduction of liquors for sick persons being in jail when prescribed in writing by a physician.

6. If the limits of a jail extend beyond the jail yard and include any house or building other than the jail, nothing herein contained shall extend to such limits unless as respects delivering or carrying such spirituous liquors to prisoners confined within such jail or the limits thereof.

CHAP. 20.  
Exceptions where houses within the limits

7. The municipal council in the different municipalities shall from time to time make and publish rules and orders for fixing and ascertaining the boundaries of jail yards, and shall publish all by-laws and regulations made for defining jail limits under the provisions of the chapter "Of County Incorporation," and until jail limits are defined under the authority of said chapter or of this Chapter they shall remain as at present established.

Boundaries fixed by municipal council.  
Jail limits.

8. The municipal council may from time to time make orders for the regulation of county buildings and for the internal regulation of county or municipal jails, for the guidance of jailers and other subordinate prison officers and for the comfort and control of prisoners; but the same shall not extend to interfere with or affect the security of prisoners there confined nor the custody or control of the sheriff over his prisoners, nor to lessen his responsibility for their safe keeping.

Municipal Councils to make orders for regulation of county buildings for internal regulation of jails.  
Proviso.

9. The municipal council may regulate the salary of jailers and subordinate prison officers, and may regulate or abolish the payment by prisoners of fees.

Municipal council may regulate salaries and fees.

10. Certified copies of all such orders shall forthwith thereafter be furnished by the clerk of the municipality to the prothonotary of the county, and thereupon the Supreme Court at its next term may alter, disallow or confirm the same. If not altered or disallowed at the next term they shall immediately thereafter be in force.

Orders may be altered or disallowed by Supreme Court.

11. Every sheriff and every jailer shall keep a copy of the jail regulations posted in some conspicuous part of the building, and the clerk of the municipality shall furnish him therewith upon demand.

Jail regulations to be posted up.

12. All persons arrested under warrants of justices of the peace, charged with offences within the jurisdiction of such justices, may be confined in lock-up houses either before or after conviction.

Persons arrested on warrants may be confined either before or after conviction.

13. The municipal and town councils for the several municipalities and towns shall appoint keepers of such lock-up houses, who shall be responsible for the safe custody of prisoners.

Keepers of lock-up houses, how appointed.

14. The Lieutenant-Governor-in-Council may from time to time make regulations in reference to the mode in which prisoners confined in the common jails of the

Governor-in-Council may make regulations



**CHAP. 20.** Province shall be secured and kept, and may by such regulations prescribe the diet of such prisoners and all matters relating to their treatment during confinement, including any precaution necessary to prevent the escape of such prisoners, and may by such regulations direct or authorize the employment upon any work or duty beyond or in the limits of any common jail of any prisoner who is sentenced to be imprisoned with hard labor in such jail or who is therein confined for the breach of any law of Canada or of the Province of Nova Scotia, or of any by-law of any municipal corporation in the Province.

Prisoner to be subject to rules, &c., of jail. 15. Every such prisoner during such employment shall be subject to all the rules, regulations and discipline of the jail so far as practicable, and to any regulation made by the Lieutenant-Governor-in-Council under the first section of the Acts of Canada, 40 Victoria, chapter 36, section 1.

Prisoner to be under care and supervision. 16. No such prisoner shall be so employed save under the strictest care and supervision of officers appointed to the duty.

Street, highway, &c., portion of jail. 17. Every street, highway or public thoroughfare of any kind along or across which prisoners may pass in going to or returning from their work, and every place where they may be employed under this Chapter, shall while so used be considered a portion of the jail for the purposes of this Chapter, so far as the legislative authority of the Province extends in this behalf.

Books of account kept by sheriff showing wages earned by prisoners, and to render accounts. 18. Every sheriff shall keep or cause to be kept by the jailer of each jail books of account, shewing the amount of wages earned by the prisoners under his control, and each sheriff shall render an account of the amount collected in the same manner as he is required to do with respect to other sums of public money in his hands, in accordance with the laws of this Province and in accordance with the regulations to be made under this Chapter.

Sureties of sheriff not affected by this Chapter. 19. Nothing in this Chapter shall diminish the duration or extent of the responsibility of the sureties of any sheriff.

Parliament of Canada. 20. Nothing in this Chapter shall be construed to relate to any matter in respect of which the competence to legislate is in the Parliament of Canada alone.

Inconsistent by-laws repealed. 21. Regulations made under the provisions of this Chapter shall supercede and repeal all by-laws of any municipality which may be inconsistent therewith.

Sheriff to permit person arrested to have liberty of limits upon giving bond. 22. When any person is or may be arrested the sheriff shall permit such person to have the liberty of the limits designated for such jail, upon his giving the said sheriff a bond with two sufficient sureties in double the amount of the sum for which he is in custody, in the following form or to the like effect :

We, (here insert the names and additions of the obligors) are jointly and severally bound unto \_\_\_\_\_, Sheriff of the County of \_\_\_\_\_ in the penal sum of \_\_\_\_\_, to be paid to the said sheriff, his successors or assigns. CHAP. 20.  
Bond.

Sealed and dated this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

Whereas the said sheriff hath permitted the said \_\_\_\_\_, being in his custody at the suit of \_\_\_\_\_, to have the liberty of the limits of the jail of \_\_\_\_\_ county.

Now the condition of the above obligation is that if the said \_\_\_\_\_ shall not go out of the said limits or escape at any time while he has such liberty then this obligation to be void, otherwise to be in force.

Signed, sealed and delivered }  
in presence of }

For which bond the sheriff shall receive one dollar and no more, and the sheriff or his successor, at the request of the plaintiff or his attorney, shall assign the same to the plaintiff in the action by indorsement under his hand and seal. The plaintiff may if the bond be forfeited bring an action thereon in his own name. In any action brought on such bond the court or judge shall find a verdict for the plaintiff for such sum only as they shall think right and proper under all the circumstances of the case, unless it shall appear that the defendant connived at the escape of the prisoner from such limits, in which case they shall find for the amount for which the prisoner was committed. Fee for bond and  
provision for as-  
signment thereof  
  
Plaintiff's rem-  
edy on bond.

23. The provisions of the preceding section shall extend to all cases of imprisonment for non-payment of a sum of money, except when the same is payable to the Queen's Majesty, her heirs or successors, or where the same is payable by way of fine or penalty upon summary conviction, or where the imprisonment is for non-payment of rates or taxes, or where by the law authorizing the imprisonment the party is precluded from the benefit of jail limits. Provisions in  
case of imprison-  
ment for non-  
payment of a  
sum of money.  
Exceptions.

24. No sheriff or jailer shall be liable to an action for escape where liberty of the limits is granted under the provisions of this Chapter unless the person to whom such liberty is granted go beyond the limits with the connivance of the sheriff. When sheriff to  
be liable to an  
action for escape.

25. Should the sheriff or his successor require a new bond from any person on the limits the same shall be given by such person as if he were in actual custody, and on neglect such sheriff or his successor may commit such person to jail. New bond.

CHAP. 20.

26. Any person having the liberty of the limits may render himself or be rendered by his surety to prison in discharge of the limit bond.

Prisoner or surety may discharge limit bond.  
In action on bond defendants to be liable for debt and costs.  
Proviso.

27. In any action on such bond the defendants shall be liable for the full amount of the debt and costs for which the prisoner was arrested, provided that in any such action the sureties shall be allowed to render their principal, as in case of bail bonds, at any time before the time for pleading has elapsed, or within such extended time for pleading as the court or a judge may allow on cause shewn under affidavit, and the sureties so rendering the principal shall only be liable for such damages as the plaintiff has actually sustained and for the costs incurred in such action; and the prisoner after he has been so rendered shall not be entitled to the privileges of jail limits.

## TITLE VI.

## OF THE SUPPORT OF PUBLIC WORSHIP.

## CHAPTER 21.

## OF THE CHURCH OF ENGLAND.

1. No person shall officiate as a minister of the Church of England within the Province of Nova Scotia but such as shall be duly licensed or instituted to the cure of souls by the Bishop of the Diocese, having previously subscribed to such declarations of assent and conformity to the doctrines and discipline of the Church of England as may be enjoined in England at the time of making such subscription, except so far as they or any of them may be contrary to or inconsistent with any canons or regulations of the Provincial or Diocesan Synods. And no license or institution shall be refused without the reasons therefor being duly signified in writing and delivered to the applicant within three months from the date of application for such license or letters of institution.

Ministers must be licensed or instituted by Bishop, &c.

2. The parishes already established shall remain as heretofore, and when any church shall be erected for divine service according to the rites of the Church of England, the Bishop of the Diocese may allot a district which shall be the parish of such church. The Bishop may also divide and sub-divide any parish now established, or hereafter to be established; but no parish shall be divided or sub-divided unless on the application of a majority of the parishioners present at any public meeting of the parish, called for the consideration of such a measure.

Parishes established; mode of allotting.

Bishop may divide and subdivide parishes. Proviso.

3. When any rectory shall be vacant a meeting of the parishioners shall be summoned either by the church wardens or by any five parishioners, either by notice given in the church, or churches if there be more than one, during the time of divine service; or if there be no public service in the parish, then by notice affixed to the door or doors of the church or churches, such notice to be given in any case not less than fifteen nor more than thirty days before the day of meeting, at which meeting a clergyman in full orders of the Church of England, or of any branch of the church in full communion with the Church of England, may be elected rector by a majority of the

Election of rector, &c.

CHAP. 21. parishioners then present. A copy of the resolution containing the name of the person elected shall be forthwith forwarded to the Bishop, attested by the signature of the chairman and two other parishioners; and the clergyman so elected, when he shall have obtained the Bishop's Letters of Institution, shall be inducted by the Bishop into the said parish. If no election is made within twelve months after the occurrence of a vacancy the Bishop shall be at liberty to appoint a rector.

Annual meeting  
of parishioners.

4. The rector, or clergyman officiating as rector, and the parishioners of every parish shall meet annually on Monday in Easter week, notice of the hour and place of meeting having been first given by the rector or officiating clergyman, at which meeting two church wardens and twelve vestrymen shall be chosen by the parishioners. And the rectors, with the church wardens and vestry so elected, in all matters connected with the church and persons usually attending its services and ordinances within their respective parishes, shall have the like powers as they have heretofore exercised in this Province. In the absence of the rector, or clergyman officiating as rector or as a duly licensed curate, the parishioners may at any meeting elect their own chairman. Where there are two or more churches in one parish the congregation of each church, other than the parish church, may meet together annually to appoint two chapel wardens, who subject to the control of the rector, wardens and vestry, shall have the charge of said church or chapel; and the exercise of this right shall not interfere with the right of the parishioners included in the said congregation or congregations to take part in the Easter meeting for the election of church wardens and vestrymen for the whole parish.

Proceedings in  
case such meet-  
ing is not held,  
&c.

5. If in consequence of a vacancy or for any other reason no Easter meeting shall be held in any parish, the church wardens and vestry of the previous year shall continue in office, provided that any warden or vestryman may resign his office by a notice in writing sent to the Bishop or to his commissary administering the diocese, who upon receipt of any such resignation shall communicate the same to the parochial authorities. In case of the refusal to act of any person elected to the office of church warden or vestryman, or of any vacancy or of vacancies in either of the said offices (by death or resignation) the vacancy or vacancies may be filled at a meeting held at any time of the year, as hereafter provided after due notice. Either at the Easter meeting, or if so ordered by the Easter meeting at a meeting of the vestry held not later than three weeks after the parish meeting or adjourned parish

meeting, the outgoing wardens shall present their accounts CHAP. 21. and shall transfer to the newly elected wardens the books and all documents, moneys or other property belonging to the parish which shall be in their possession.

6. The rector, church wardens and vestry of each parish shall together be a body politic and corporate, with the style of "The Rector, Wardens and Vestry of the Parish of . . . . .," with power to sue and be sued, to receive grants of real and personal estate for the use of the church and all parish purposes, to improve the same and receive the rents thereof for the like use, and with the approval of the Bishop to sell and convey such real and personal property, and to have a common seal, and to make by-laws and regulations consistent with the laws of the Province for the management of the temporalities of their church and the due and orderly conducting of their affairs. Provided nevertheless that if at any time the parish be without a rector the same rights and privileges shall be vested in the wardens and vestry until the appointment of a rector, except so far as relates to the permanent alienation of any property. All the real and personal property belonging to any parochial corporation shall hereafter be and become vested in the rector, wardens and vestry of that parish in their corporate capacity, subject to any existing rights or trusts therein.

7. The outgoing wardens of each parish shall prepare and submit to the annual meeting of the parishioners a return of the property of the parochial corporation, whether real or personal, and of all moneys that may have been invested by or on behalf of the corporation during such year, and a schedule of the securities and the rate of interest upon which such investments have been made, which return the incoming wardens shall within three weeks forward to the registrar of the diocese. If at any time the Bishop has reason to believe in consequence of information received that the property of any parish is not rightly administered he may institute legal proceedings against the corporation or any officers of the said parish through whose default or neglect any loss may have been occasioned.

8. The following persons shall be entitled to vote at all meetings of parishioners of any parish of the Church of England :

(1.) Men of full age who are and who have been for not less than six months communicants in the said parish,

(2.) Men of full age who are members of the Church of England, habitually attending the services thereof within the parish for which they claim to vote, except when

Rector, church-wardens and vestry to be a body corporate, &c.

Proviso.

Outgoing wardens to make an annual return of property, &c.

Bishop may institute certain legal proceedings.

Persons entitled to vote at meetings of parishioners.

CHAP. 21. temporarily hindered by absence from their ordinary residence, or any other unavoidable impediment, such attendance having commenced not less than three months previous to the day of meeting, being pew-holders or otherwise contributors towards the funds for the maintenance of the ministrations of the said Church of England, in any church or chapel, subject to the control of the corporation of the said parish, and who are not more than six months in arrear with respect to such contributions, provided always that any person before voting may be required by the chairman of the meeting or by any parishioner present to sign the following declaration:

“I do declare that I am a member of the Church of England, and belong to no other religious denomination, and am qualified as required by clause (2), section 8, of the Church Act.”

And also when not voting as a communicant to produce a receipt or certificate from the church or chapel wardens, or one of them, or the vestry clerk, showing that he is such pewholder or contributor, and that he is not more than six months in arrear, as aforesaid. The parishioners may from time to time at any regular annual parish meeting define what contribution shall be deemed necessary to qualify a person not a pewholder to vote at any subsequent meeting and the mode and time of payment of such contribution, provided that such definition of qualification shall not take effect at any meeting held within six months.

Rector, wardens  
and vestry to  
meet as often as  
necessary.

9. The rector, or clergyman officiating as such, and the church wardens and vestry may meet for the transaction of business as often as occasion may require at the instance of the rector or of the church wardens, or on the requisition of the majority of the vestry made to the rector or church wardens, a majority of the whole number of members of the corporation being a quorum for the transaction of business; and the rector, or clergyman officiating as such, church wardens, vestry and parishioners may assemble for all business connected with the parish as often as it may be considered necessary either at the instance or upon the application of the rector, or clergyman officiating as such, or the church wardens or the parishioners, provided that ten at least of the latter sign a requisition to that effect, notice of such meeting and of the business to be transacted thereat having been given during divine service in the parish church on some Sunday at least three days previously by the minister of the parish, who shall give the required notice whenever called upon as aforesaid, provided that such notice shall be placed in his hands in writing at least twenty-four hours before the time of giving notice.

10. All engagements for the salary of a minister, or for the temporary performance of divine ministrations, shall be made by the church wardens and vestry, and any subscription towards the payment of such salary or other engagement may be sued for and collected by the said church wardens. CHAP. 22.  
Subscriptions, &c., may be sued for.

11. No conveyance by lease or otherwise of any parsonage held by a minister of the Church of England shall be valid for a longer period than his own incumbency, and no such conveyance of any property belonging to any parish or held by any rector in virtue of his office shall be valid for a longer period than as aforesaid unless with the concurrence of the church wardens and vestry expressed in writing under their common seal, and in no case for a longer period than twenty-one years; but with the concurrence of the Bishop, the rector and the church wardens and vestry full and absolute sale and conveyance may be made of any glebe land or other real estate belonging to the parish, if the same be thought for the interests thereof. Leases, &c., of parsonage.

12. No person shall be elected a church warden or vestryman who is not qualified to vote at a church meeting under clause eight. Qualification for warden or vestryman.

13. The Lord Bishop of Nova Scotia may grant a license to officiate as a clergyman of the Church of England in this Province to any person who shall have been admitted to the order of priest or deacon by any Bishop of the Protestant Episcopal Church in the United States of America, anything in the Act of the Imperial Parliament of the 26th year of his late Majesty King George III., cap. 84, to the contrary notwithstanding. Bishop may grant license to officiate as clergyman.

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## CHAPTER 22.

### OF RELIGIOUS CONGREGATIONS AND SOCIETIES.

1. When any number of persons not less than twenty, capable of contracting, desire to form themselves into a congregation of Christians for the public worship of God according to their peculiar rights and ceremonies, they may by deed by them executed in the presence of two or more witnesses, which shall be recorded in a book kept for that purpose, constitute themselves such congregation and adopt a suitable name therefor and declare the place where the same is established and the particular denomination of Congregations formed by deed, trustees named, other particulars provided.



CHAP. 22. Christians with whose doctrines such congregation is connected; and they may name two or more persons of the congregation to be trustees thereof and give them a name of office, and describe in such deed by bounds the particular situation of all lands conveyed to or in trust for the congregation for all purposes connected therewith; and they may also set forth in such deed the constitution of the congregation, the mode of admission of future members, by whom the right of voting at meetings shall be enjoyed, how the votes shall be ascertained and given, the manner in which vacancies in the trust shall be supplied, and such other particulars as they may think proper.

Deed to be registered; property, how vested.

2. The deed shall be duly registered in the office of the registrar of deeds for the county or district where the congregation is established, and after its registry all the lands described therein and all real and personal estate granted to the congregation or to their use shall be vested in the trustees named in the deed for the use of the congregation, and after the death or removal of any trustee or his becoming incapable to act shall vest in the succeeding trustees, subject to the same trusts without any assignment or conveyance except the transfer of stock and securities in the public funds, and shall also in any suit at law or in equity or in any criminal prosecution be deemed the property of the trustees.

Trustees to sue and be sued.

3. Such trustees in all cases concerning the real and personal estate of the congregation may sue and be sued by their name of office, and no action shall abate by the removal or death of the trustees or any of them, but shall be proceeded in by or against the succeeding trustees, who shall pay or receive the like moneys and costs as if the action had been prosecuted in their names for the benefit of or to be reimbursed from the funds of the congregation.

Amount of real and personal estate to be held.

4. Every congregation established under these provisions may hold in the name of their trustees real estate not exceeding the yearly value of eight thousand dollars, and personal property not exceeding in the whole at any one time forty thousand dollars, and may use and dispose of such real and personal estate as the congregation shall deem expedient.

Meetings, how held, by-laws may be made thereat, proceedings to be recorded.

5. The members of every such congregation may meet when they shall think proper, and at such meetings by the votes of the majority of the members present may make and put in execution such regulations, not being contrary to the laws of this Province nor to any rule or regulation embodied in the deed under which the congregation or society may be constituted, as the majority shall deem necessary for the government of the congregation, and may

change such regulations as they may think proper, and such majority may also choose trustees to supply any vacancy in the trust, and may remove from office any of the trustees for the time being, and manage and superintend the affairs of the congregation; the time and place of meeting shall be duly notified as prescribed by rules therefor, and some fit person shall be chosen chairman at every meeting, and all proceedings thereat shall be entered in the books of the congregation and signed by the chairman and clerk of the meeting, and proof of such entry so signed shall be deemed sufficient evidence of such proceedings and of the regularity of the meeting.

6. Every person admitted a member of the congregation after the registry of the deed shall execute the same in the presence of two witnesses before he shall be deemed a member.

Membership,  
how regulated.

7. All real estate which at the formation of any congregation under this Chapter shall be held therefor by any trustees not appointed under any act or deed of incorporation shall, by such trustees or their survivors, or by such of them as then remain in this Province, be conveyed to the new trustees named in the deed by their name of office, and upon the conveyance being made and registered all the estate and interest of the original trustees or the survivors of them and their heirs shall be vested in the new trustees to the use of the congregation as effectually as if all the original trustees had joined in the conveyance.

Real estate held  
before deed exe-  
cuted, how con-  
veyed to new  
trustees.

8. Any religious society or congregation incorporated by special act of incorporation or by deed under the provisions of the act heretofore in force for such purpose may avail themselves of the provisions of this Chapter, provided the parties executing the deed comprise two-thirds at least of the members of the former corporation who at the time form a part of the congregation, and also two-thirds at least of the persons actually exercising the functions of trustees by their individual names as such trustees; and upon the new deed being registered the former act or deed of incorporation shall from thenceforth cease to be in operation, and the property held thereunder shall vest in the new trustees in accordance with the terms of the deed; but nothing herein contained shall affect the legality of any proceedings regularly had under the former act or deed of incorporation.

Provisions for  
enabling congre-  
gations incorpor-  
ated by special  
acts to avail  
themselves of  
this Chapter.

9. By the vote of the majority of the members of any congregation present at any regular meeting of the congregation, the trustees for the time being shall sell, mortgage, lease or convey any real estate of the congregation for such estate, and on such terms as the meeting shall

Real estate, how  
sold or disposed  
of.

**CHAP. 22.** direct; and every conveyance thereof executed by the trustees for the time being and signed by the chairman of the meeting which shall order such disposal shall be valid in law to convey such estate in the lands therein described.

Sale of building used for public worship, &c.

10. Whenever the congregation using any building for the purpose of public worship may wish to dispose thereof on account of the same having become dilapidated or otherwise, and shall not have legal power to do so, the proprietors of such building at a meeting held for the purpose, after public notice thereof given in at least three of the most public places within the settlement wherein the building is situate, at least ten days previously, may by a vote of three-fifths of the proprietors present at such meeting appoint a committee of three of their number to make sale of such building, and the committee shall sell the same conformably to the instructions given at the meeting and cause the removal thereof, and shall apply the proceeds of the sale as directed by the meeting; but no meeting shall be valid for such purpose unless a majority of the proprietors are present.

Proviso.

When vested in trustees.

11. In case the building shall be vested in trustees who shall not have legal power to sell the building, the same may be disposed of by a meeting of the persons for whose benefit such building is held, called and constituted as directed in the preceding section, and a majority of three-fifths of the persons so interested present at the meeting may empower the trustees or a committee to sell the building and apply the proceeds.

Sale of land not authorized.

12. Nothing herein shall authorize the sale of the land on which any building so to be disposed of shall be situated.

Clergymen or ministers, by whom engaged.

13. Under the order of any such meeting or of a meeting of the church members, when by the provisions of the deed of constitution or by the regulations of the congregation the choice of a minister shall be vested in the church members, the trustees may enter into agreements in writing with any clergyman or minister whom the congregation or church shall appoint to their spiritual charge for such period and salary as shall be agreed upon.

Agreement to be entered in congregation books.

14. The trustees having agreed with any minister or clergyman, shall without delay cause the agreement to be entered at length in the books of the congregation.

How funds provided in case of deficiency to meet engagements.

15. The trustees for the time being, by the vote of the majority of the members of the congregation at any such meeting shall, in cases where the funds at their disposal are inadequate to the discharge of the claims upon them, sue for and recover from members a ratable share to be fixed according to the rules of the congregation, of such amount or deficiency, by separate suit for their respective

rateable proportion of the whole amount against the respective surviving and solvent members of the congregation or the representatives of deceased members liable to such payment. CHAP. 22.

16. Any religious society incorporated by act of this Province or constituted by deed under the provisions of this Chapter may at any regular meeting held in accordance with their act of incorporation or deed of constitution alter or amend their constitution or bye-laws; but the constitution shall not be altered unless two-thirds of the members present at any general meeting concur in such alteration. Society may alter constitution.

17. Any religious society or congregation not incorporated or constituted by deed under this Chapter may, at any meeting of the congregation held in pursuance of a notice stating the object of such meeting given at their usual place of holding public worship during divine service either by verbal announcement to the congregation or by posting the same on the door of such place of worship for three Sundays preceding such meeting, proceed to appoint a chairman and secretary, and may upon the vote of two-thirds of the male members of the congregation and of adherents actually contributing to the funds thereof, above twenty-one years of age, actually present, proceed to the adoption of a declaration by resolution or otherwise to the effect that they constitute themselves a religious congregation or society, and may at any such meeting or any subsequent meeting called in the same manner proceed by the majority of votes to the adoption of such permanent constitution and bye-laws not inconsistent with the laws of this Province as they shall consider necessary, and may appoint trustees and such other office-bearers as they shall see fit and define their powers and duties, and may regulate the terms of membership in the society or congregation. Mode of constituting society.  
May adopt constitution and bye-laws, and appoint trustees.

18. The real and personal estate of the society or congregation shall be vested in such persons as shall be duly appointed trustees thereof by resolution of such meeting, recorded in the books of the congregation, during their continuance in office. Estate vested in trustees.

19. The officers appointed from time to time by the congregation or society shall be invested with all such powers for the holding and transference of the property and management of the business of the congregation or society as shall be conferred upon them by the constitution. Officers, powers of, &c.

20. The constitution of the society may be altered by the vote of two-thirds of the members present at any meeting of the congregation or society duly called as Constitution, how altered.

**CHAP. 22.** hereinbefore mentioned. All other business of the society not delegated to the office-bearers thereof shall be transacted by the votes of the majority of members present at any such regular meeting.

Proceedings for  
sale of church,  
&c.

21. Any religious society or congregation of Christians not duly incorporated or constituted under this Chapter, or if so incorporated or constituted not having power to dispose of its place of worship for the purpose of erecting a new place of worship, may at any regular meeting of the society or congregation, by resolution of the majority of two-thirds of the members present, authorize such persons as they may appoint for the purpose to sell or otherwise dispose of the place of worship of the society or congregation in such manner as the meeting shall appoint; and a sale thereof under the authority of such resolution shall be valid and effectual, provided such resolution and authority in writing are duly recorded in the county or district registry of deeds.

Episcopal cor-  
poration may sell  
real estate.

22. Any episcopal corporation sole holding real estate in trust for any religious denomination in this Province, may dispose of the same by deed executed by him and any three ordained clergymen of the denomination to which he belongs and residing within the diocese.

Appointment of  
trustees.

23. In cases where real estate has been or shall hereafter be conveyed in trust for erecting thereon houses for public worship, or dwelling or other houses or buildings intended for the accommodation of ministers of the Gospel or clergymen officiating or engaged to officiate for any church or congregation of Christians, and the mode of appointing new or other trustees than the grantees is provided for in the deed of conveyance creating such trust; or otherwise in writing; when a vacancy shall occur by reason of the death, removal, resignation or displacement of any trustee, it shall not be held necessary that the remaining or surviving trustee or trustees, if any, shall make or shall have made any deed or conveyance to the newly-appointed trustee, in order to invest him with the estate, functions, trusts and powers of the original trustees under such deed or declaration of trust or instrument in writing creating such trust and directing the appointment of future or succeeding trustees; but such newly-appointed trustee shall thereupon, without deed or other conveyance, be seised in fee or other estate to the uses and trusts created as fully and completely as were the original grantees: Provided that the terms or conditions for such appointment are duly complied with.

24. Nothing herein contained shall affect any of the provisions of the Chapter "Of the Church of England," nor shall interfere with the spiritual government and discipline of any church further than may be provided for in the deed or declaration under which the society or congregation is constituted.

CHAP. 23.

Not to affect Church of England.

## CHAPTER 23.

### OF ASSESSMENTS FOR REPAIRS OF MEETING HOUSES.

1. When funds are required for repairing, finishing, or painting any meeting house or church, the proprietors thereof, at a public meeting whereof notice shall have been previously given during the time of divine service at such meeting house or church, on three several Sundays may by vote of three-fifths of the proprietors present at such meeting declare what repairs are necessary and the amount required therefor, and may also nominate three or more persons a committee to assess and apportion the sum so voted on the several pews of the meeting house or church, according to the relative size and value of such pews, at an equitable rate; of which assessment and apportionment public notice shall be given by posting up the same in some conspicuous place in the meeting house or church and also on the door thereof for three successive Sundays on which divine service shall be performed thereat next after the making thereof.

Repairs of meeting houses provided for by assessment.

2. If after such notice the persons interested in any of the pews shall not pay the sums assessed on such pews within three months thereafter, the committee, after notice having been given on the previous Sunday immediately after divine service, may proceed to let such pews at auction for such period, not exceeding ten years, as may be sufficient to pay the sum so assessed thereon respectively; or they may on giving the like notice let such pews from year to year until the rate or assessment be fully paid, so that such letting shall not extend beyond the term of ten years.

Where assessment not paid, pews may be let for a limited time

3. The persons who shall so lease the pews shall be put in possession thereof by the committee and shall have the exclusive occupation thereof during the term of their lease; and the committee may sue for and recover the

Possession, how given, rent recoverable: mode of removal.

CHAP. 23. rent, and shall have power to hold or occupy such pews, and to eject any person illegally in possession thereof.

Further assess-  
ment. 4. If the money arising from the leasing of the pews shall not amount to the assessment thereon, the committee may make a new assessment in the same way as the original amount is hereby directed to be assessed.

Chapter not to  
affect Episcopa-  
lians or Wes-  
leyans. 5. Nothing in this Chapter shall extend to any church or chapel belonging to or connected with the Church of England, or to any meeting house belonging solely to the denomination of Christians called Wesleyan Methodists.

## TITLE VII.

## OF THE PUBLIC HEALTH.

## CHAPTER 24.

## OF PRACTITIONERS OF MEDICINE AND SURGERY.

1. The Provincial Medical Board shall consist of thirteen regularly qualified medical practitioners of not less than seven years standing, seven nominated and appointed by the Governor-in-Council and six by the Nova Scotia Medical Society; of which Board any five shall be a quorum for the purpose of carrying out the provisions of this Chapter. The Board shall have power and authority to take, receive, hold and enjoy real and personal property donated, given, granted, devised, bequeathed or otherwise bestowed upon or conveyed to them, and shall hold the same in each case in trust for such purposes as may be mentioned by the donor; and if no such purpose is so mentioned, then the Board may mortgage, lease, or otherwise dispose of any such property for the furtherance of the objects of the Provincial Medical Board under this Chapter.

Provincial Medical Board, how constituted.

Board have power to hold real and personal property.

2. Every vacancy in such Board, whether caused by death, resignation, removal from office or otherwise, shall be filled up by the body or authority who shall have nominated and appointed the person causing such vacancy with as little delay as possible; so that, as far as practicable, the Board shall always consist of thirteen members, seven appointed by the Governor-in-Council and six by the Nova Scotia Medical Society. In case of the dissolution of such Society or their neglect or refusal to fill up a vacancy, which they are empowered and directed by this section to supply, within three months after such vacancy shall have been caused, the remaining members of the Provincial Medical Board shall nominate and appoint a properly qualified person to fill such vacancy in the place and stead of the Nova Scotia Medical Society. In case of a similar neglect or refusal on the part of the Governor-in-Council, the Board shall have and exercise the like power. Provided that no person shall be capable of being appointed to such Board who shall not have the qualifications prescribed in the last preceding section.

Filling of vacancies in Board.

Proviso.



## CHAP. 24.

Appointment of  
Secretary.

3. The Provincial Medical Board, or a majority of the members composing the same, shall appoint from time to time a regularly qualified medical practitioner resident at Halifax to act as Secretary of the Board, who shall attend the meetings of the Board and keep a record of the proceedings of the same in a book or books to be by him provided for that purpose, together with all such matters and things as to the Board shall appertain.

Secretary to be  
also registrar.  
Salary.

4. The Secretary shall also be the Registrar of the Provincial Medical Board, and shall be paid such salary out of the moneys to be received as hereinafter provided, as the Board shall, with the approval of the Governor-in-Council, determine.

Publication of  
Medical Register.

5. The Registrar of the Board shall, before the first day of August in every year, cause to be printed and published in the *Royal Gazette* of this Province, and in such other manner as the Board shall appoint, a correct register of the names in alphabetical order according to the surnames, with the respective residences (in the form set forth in Schedule A to this Chapter, or to the like effect) and medical titles, diplomas and qualifications conferred by any college or body with the dates thereof of all persons appearing on the register as existing on the thirtieth day of June in such year; and such register shall be called "The Medical Register;" and a copy of such register for the time being, purporting to be so printed and published as aforesaid, shall be *primâ facie* evidence in all courts and before all justices of the peace and others that the persons therein specified are registered according to the provisions of this Chapter; and the absence of the name of any person from such copy shall be *primâ facie* evidence that such person is not registered according to the provisions of this Chapter. Provided always that in the case of any person whose name does not appear in such copy, a certified copy, under the hand of the Registrar of the Board, of the entry of the name of such person on the register, shall be evidence that such person is registered under the provisions of this Chapter.

Copies of such  
register to be  
evidence.

Preliminary Ex-  
amination.

6. Hereafter no person shall begin or enter upon the study of physic, surgery, or midwifery, for the purpose of qualifying himself to practise the same in this Province, unless he shall have obtained from the Provincial Medical Board a certificate that he has satisfactorily passed a matriculation or preliminary examination in the subjects specified in Schedule B to this Chapter.

Qualification for  
matriculation ex-  
amination.

7. No candidate shall be admitted to such matriculation or preliminary examination unless he shall have at least fourteen days previous to such examination given notice to

the Registrar of the Board of his intention to present CHAP. 24. himself for such examination, and transmitted to the Registrar a certificate showing that he has completed his sixteenth year; and shall before the examination have paid a fee of ten dollars to the Registrar.

8. Subject to the exceptions hereinafter made no person shall practise physic, surgery or midwifery in Nova Scotia, unless his name shall be registered in the book of registry of the Provincial Medical Board, and unless he shall have received from such Board a license to practise. Practitioners name must be entered in registry book and license procured.

9. No person shall be entitled to have his name entered on the register of the Provincial Medical Board or to receive a license to practise from such Board unless he shall satisfy the Board that he has passed the matriculation or preliminary examination; that after passing such examination he has followed his studies during a period of not less than four years, (one of which may be under the direction of one or more general practitioners duly licensed); that during such four years he has attended at some University College or Incorporated School of Medicine in good standing courses of lectures amounting together to not less than twelve months, on general Anatomy, on practical Anatomy, on Surgery, on the Practice of Medicine, on Midwifery, on Chemistry, on *Materia Medica*, and Pharmacy, and on the Institutes of Medicine or Physiology, and one three months' course of Medical Jurisprudence; that he has attended the general practice of an hospital, in which there are contained not less than fifty beds under the charge of not less than two physicians or surgeons, for a period not less than one year, or two periods of not less than six months each; that he has also attended two three months' courses or one six months' course of Clinical Medicine, and the same of Clinical Surgery; that he has, after examination in the subjects of the course, obtained a degree or diploma from such University, College or Incorporated Medical School, or for want of such degree or diploma that he has satisfactorily passed an examination in the various branches hereinbefore specified, before examiners to be appointed by the Provincial Medical Board; that he is not less than twenty-one years of age; and that he has paid to the Registrar of the Board a fee of twenty dollars. Provided that the Provincial Medical Board shall have power, subject to the approval of the Governor-in-Council, to make such alterations in the foregoing curriculum as may from time to time be required. Qualification for person before he can register his name and procure license to practise.

10. The last preceding section shall not apply to any person in actual practise, and duly registered under the provisions of Chapter 56 of the Revised Statutes, Third Last preceding section not to apply in certain cases.

CHAP. 24. Series, who shall be entitled to be registered and to receive a license to practise under this Chapter without payment of any fee: and notwithstanding the provisions of such section, any person upon producing to the Provincial Medical Board conclusive evidence that he has passed a Matriculation or Preliminary Examination such as is required by this Chapter for persons beginning their medical studies in Nova Scotia; that he has, before graduating or taking a diploma, studied for at least four years in the manner provided in section 9 of this Chapter, or pursued what the Board shall deem an equivalent course of study; and has passed a final examination in the subjects of such course; or for want of any of such requisites shall have fulfilled such conditions as the Board may determine, and shall pay a fee of twenty dollars, shall be entitled to be registered and to receive a license to practise.

Provision in case person who has begun medical studies before 1st of May, 1880, has not passed matriculation.

Such person to apply before 1st of January, 1885.

Registration of such person.

Powers and duties of Provincial Medical Board.

11. Notwithstanding anything to the contrary in this Chapter contained, any person who shall have begun his medical studies before the first day of May, 1880, and who has otherwise complied with the requisites of this Chapter, shall, notwithstanding that he may not have passed the matriculation or preliminary examination required by this Chapter, be entitled to be registered and receive a license to practise; provided that such person shall apply for such license and registration before the first day of January, A. D. 1885, after which date this section shall cease and determine. Any person obtaining registration under this section shall have the fact recorded in the official register, that he has been so registered without having passed such matriculation or preliminary examination, and any certificate or announcement written or printed and published of such registration issued by the Registrar of the Medical Board shall explicitly state that fact.

12. The Provincial Medical Board shall have power and it shall be their duty—

1°. To elect a President and such other officers, including the Secretary and Registrar hereinbefore provided for, as may be necessary to the working of this Chapter:

2°. To regulate the study of Medicine, Surgery and Midwifery; by making rules not inconsistent with this Chapter, with regard to the preliminary qualification, course of study to be followed, the final examination, and the nature of the evidence to be produced before the Board upon these subjects:

3°. To appoint fit and proper persons to conduct the preliminary or matriculation examination; to decide upon the times for holding such examination; and to fix the remuneration, if any, to be paid to such examiners:

4°. To examine all degrees, diplomas, licenses and CHAP. 24.  
other credentials presented or given in evidence under this Chapter, for the purpose of enabling the owner to practise in Nova Scotia; and to oblige the owner of such credentials to attest on oath or by affidavit that he is the person whose name is mentioned therein, and that he became possessed thereof honestly:

5°. To cause every member of the profession practising in Nova Scotia to enregister his name, age, place of residence, place of nativity, the date of his license or diploma, and the place where he obtained it in the register of the Board:

6°. To make orders, regulations and by-laws for regulating the registers to be kept under this Chapter:

7°. To make all such rules, regulations and by-laws for carrying this Chapter into effect as to the Board shall seem proper or necessary; which rules, regulations and by-laws shall not be inconsistent with this Chapter; and may be disallowed by the Governor-in-Council:

8°. To appoint as many medical examiners, to hold final examinations when necessary, as the Board shall deem proper: such examiners to be regularly qualified practitioners of not less than five years' professional standing and three years' residence in this Province. Members of the Provincial Medical Board may be appointed as such examiners.

13. The rules and regulations (if any) as to the times <sup>Rules to remain in force.</sup> and places of the meetings of the Board and the mode of summoning the same already made by the Board shall remain in force until altered at any subsequent meeting. In the absence of any rule or regulation as to the summoning of future meetings of the Board, it shall be lawful <sup>Meetings.</sup> for the President thereof to summon the same at such time and place as to him shall seem fit, by circular letter to be mailed to each member; provided always that at least ten days notice of such meeting shall be given. In the event of the absence of the President from any meeting some other member, to be chosen from among the members present, shall act as President. All acts of the Board shall be decided by the majority of the members present, the whole number not being less than five. At all meetings the President for the time being shall have a casting vote only.

14. All moneys forming part of the funds of the <sup>Moneys.</sup> Board shall be paid to the Treasurer, and shall be applied to carrying this Chapter into execution.

15. It shall be the duty of the Registrar to keep his <sup>Duty of the Registrar.</sup> register correct, in accordance with the provisions of this Chapter, and the rules, orders and regulations of the Provincial Medical Board, and to erase the names of all

CHAP. 24. registered persons who shall have died; left the Province without any intention of returning, or ceased to practise for a period of five years; and he shall from time to time make the necessary alterations in the address or qualifications of the persons registered under this Chapter. Provided always that the name of any person erased from the register shall be restored by order of the Board, upon sufficient cause duly shown to that effect.

Persons entitled, but neglecting to be registered.

16. Any person entitled to be registered under this Chapter, but who shall neglect or omit to be so registered, shall not be entitled to any of the rights or privileges conferred by the provisions of this Chapter, so long as such neglect or omission shall continue.

Persons adopting or refusing to adopt the practise of any particular theory of medicine.

17. No person, otherwise fully qualified under this Chapter, shall be refused registration or a license to practise on account of his adopting or refusing to adopt the practice of any particular theory of medicine or surgery. In case of such refusal by the Board the party aggrieved shall have the right to appeal to the Governor-in-Council, who, upon due cause shown, shall issue an order to the Board to register the name of such person and to grant him a license to practise.

Qualification when entered with name.

18. No qualification shall be entered on the register, either on the first registration or by way of addition to a registered name, unless the Registrar shall be satisfied by the proper evidence that the person claiming is entitled to it, and any appeal from the decision of the Registrar may be decided by the Board, and any entry which shall be proved to the satisfaction of the Board to have been fraudulently or incorrectly made may be erased from the register by order in writing of the Board.

Fraudulent entry may be erased.

Practitioner convicted of felony, &c.

19. Any medical practitioner who shall have been convicted of any felony in any Court, or shall after due inquiry be judged by the Board to have been guilty of infamous conduct in any professional respect, shall thereby forfeit his right to registration, and if registered, his name shall, by the direction of the Provincial Medical Board, be erased from the register.

Persons obtaining higher degree than that registered.

20. Every person registered under this Chapter who may have obtained any higher degree or qualification other than the qualification in respect of which he may have been registered, shall be entitled to have such higher degree or additional qualification inserted in the register in substitution for or in addition to the qualification previously registered on the payment of such fee as the Board may appoint.

21. Every person who shall be registered under the provisions of this Chapter shall be entitled according to his qualification or qualifications to practise Medicine, Surgery and Midwifery, or either or any of them as the case may be, in Nova Scotia, and to demand and recover<sup>2</sup> in any court of law reasonable charges for professional aid, advice and visits, and the cost of any medicine or other medical or surgical appliances rendered or supplied by him to his patients.

CHAP. 24.

Persons registered may practise and recover fees at law.

22. No person shall be entitled to recover any charge in any court of law for any medical or surgical advice, or for attendance, or for the performance of any operation, or for any medicine, or any other medical or surgical appliances, which he shall have both prescribed and supplied, unless he shall prove upon the trial that he is registered under this Chapter. Provided always that this clause is not intended to interfere with the sale by qualified druggists or chemists of articles properly belonging to their business.

Persons not registered cannot recover charges.

Proviso.

23. The words "legally qualified medical practitioner" or "duly qualified medical practitioner" or any other words importing a person recognized by law as a medical practitioner or member of the medical profession when used in any Act of the Legislature or legal or public document, shall be construed to mean a person registered under this Chapter.

Interpretation of certain terms.

24. No person shall be appointed as medical officer, physician or surgeon in any branch of the public service or in any hospital or other charitable institution unless he be registered under the provisions of this Chapter.

No one to be appointed public medical officer until registered.

25. No certificate required by any Act now in force or that may hereafter be passed from any physician or surgeon or medical practitioner shall be valid unless the person signing the same shall be registered under this Chapter.

Certificate not valid unless person signing is registered.

26. If any person not registered or licensed under the provisions of this Chapter practises Physic, Surgery or Midwifery for hire, gain, or hope of reward, or wilfully or falsely pretends to be a physician, doctor of medicine, surgeon or general practitioner, or takes or uses any name, title, addition or description implying or calculated to lead people to infer that he is registered under this Chapter, or who professes by public advertisement, card, circular, sign or otherwise to practise Physic, Surgery or Midwifery or to give advice therein, or in anywise to lead people to infer that he is qualified to practise Physic, Surgery or Midwifery in this Province, he shall forfeit and pay the sum of twenty dollars for each day that he so practises or leads people to infer that he is practising.

Penalty for practising, &c., without registration.

## CHAP. 24.

Penalty, how recovered and applied.

27. Any sum forfeited under the next preceding section shall be recoverable with costs, and may be sued for and recovered in the same manner as a private debt by the Provincial Medical Board or any registered practitioner in any of the courts of the Province having jurisdiction in actions of assumpsit to the extent of eighty dollars or upwards, and being recovered shall belong to the Board for the use thereof under this Chapter. Provided that where the information leading to such recovery shall have been given by any person unconnected with the medical profession such person shall be entitled to receive one-half of the sum so recovered.

Defendant must prove right to practise.

28. Upon the trial of such cause the burden of proof as to the license or right of the defendant to practise Physic, Surgery or Midwifery in Nova Scotia shall lie upon the defendant.

Fine to be paid by Registrar making false entry.

29. If the Registrar make or cause to be made any wilful falsification in any matters relating to the register, he shall forfeit a sum not less than one hundred dollars, to be recovered as hereinbefore provided as to persons practising illegally.

Fine for person procuring or attempting to procure himself to be falsely registered.

30. If any person shall wilfully procure or attempt to procure himself to be registered under this Chapter, by making or producing or causing to be made or produced any false or fraudulent representation or declaration either verbally or in writing, every such person so doing and every person knowingly aiding and assisting him therein shall forfeit and pay a sum not less than one hundred dollars, to be recovered as a private debt as hereinbefore provided.

Fine for person falsely pretending to be registered.

31. Any person who shall wilfully and falsely pretend to be or take or use any name, title, addition or description implying that he is registered under this Chapter, shall forfeit and pay a sum not exceeding one hundred dollars, to be sued for, recovered and appropriated as provided in section 27.

No suit after one year.

32. No suit shall be commenced under this Chapter after one year from the date of the offence or cause of action.

Females may practise midwifery. Proviso as to City of Halifax.

33. Nothing in this Chapter shall prevent any competent female from practising midwifery in Nova Scotia, except that any such female must satisfy the Provincial Medical Board of her competency and obtain a certificate from the Registrar to that effect before she can lawfully practise as aforesaid in the City of Halifax.

This Chapter not to prevent any person giving medical aid in certain cases.

34. Nothing in this Chapter shall prevent any person from giving necessary medical or surgical aid or attendance to any one in urgent need of it, provided that such aid or attendance is not given for hire or gain, nor the giving of

it made a business or way of gaining a livelihood by such person. CHAP. 24.

35. The members of the Provincial Medical Board appointed by or on behalf of the Governor-in-Council shall hold office during good behaviour or until voluntary resignation, and the members appointed by or on behalf of the Nova Scotia Medical Society for three years from the date of appointment, or until voluntary resignation before the expiration of such three years. Provided that it shall be lawful for the Governor-in-Council to remove any member of the Provincial Medical Board upon an address of three-fourths of such Board and due cause shewn.

Term of office of members of Provincial Board.  
Proviso.

36. Every person resident in the Province, and who shall have practised therein previous to the first day of January, A. D. 1850, shall on proof of that fact have his name registered and receive a license to practise under this Chapter.

Persons practising in Province previous to 1850 shall be registered, &c.

37. Any person while employed on actual service in Her Majesty's naval or military service as physican or surgeon may practise Physic, Surgery or Midwifery in Nova Scotia, with registry or license.

Naval and Military Physicians or Surgeons may practise in Province, &c.

38. The Provincial Medical Board shall hold a meeting in the City of Halifax every year, at which annual meeting they shall have power to appoint examiners, fix the times of examinations and transact all business arising out of this Chapter; and any such meeting may be continued by adjournment from day to day until the business before the Board be finished, but no such meeting shall be so continued by adjournment beyond the Saturday of the week in which the sitting commences. The Board shall also have power and it shall be their duty to hold such other meetings as may be necessary, at which meetings they shall have the powers and duties herein conferred and imposed upon the Board at the annual meetings.

Annual meetings of Board. Proceedings, &c.

39. The books and accounts of the Board shall at all times be open to the examination of such persons as the Governor-in-Council shall appoint to inspect the same, and of all members of the Board; and the accounts shall be annually published or laid before the Provincial Secretary.

Books, &c., open to examination.

40. The Provincial Medical Board shall, immediately upon the creation of a vacancy therein, communicate the fact to the Governor-in-Council or to the Nova Scotia Medical Society, according as such vacancy shall be to be filled up by one or the other of those bodies, and shall also notify either of such bodies of any other business requiring the attention of the same under this Chapter.

Filling vacancies in Medical Board.



## CHAP. 25.

## SCHEDULES.

## A.

NAME.	AGE.	RESIDENCE.	QUALIFICATIONS.
A. B.	23	Halifax.	M.D. College of Physicians, New York, 12th July, 1864.
C. D.	29	Windsor, Hants Co.	L. R. C. S. E., 1862.

## B.

*Uniform standard of Matriculation or Preliminary Examination established under this Chapter.*

*Compulsory*: English Language, including Grammar, composition and writing from dictation; Arithmetic, including vulgar and decimal fractions and the extraction of the square root; Algebra to the end of simple equations; Geometry,—first three books of Euclid; Latin, one book,—translation and grammar; Elementary mechanics of solids and fluids.

And one of the following *optional* subjects: History of England, with questions in Modern Geography; French translation; German translation; one Greek book; History of Nova Scotia; History of the Dominion of Canada.

## CHAPTER 25.

## OF THE SALE OF DRUGS AND MEDICINES.

Board of Examiners.

1. There shall be a board of examiners consisting of five persons, to examine into the qualifications for selling, dealing in, compounding and dispensing drugs and medicines of such persons as shall from time to time desire to be examined and registered under this Chapter. Two of the examiners shall be appointed by the Provincial Government and three by the Pharmaceutical Council of the Nova Scotia Pharmaceutical Society, a body corporate under

and by virtue of Chapter 11 of the Acts of the Legislature of Nova Scotia for the year One Thousand Eight Hundred and Seventy-Six. Every appointment of an examiner shall be for three years. CHAP. 25.

2. The board of examiners shall meet at least once in every year for the purpose of examining candidates for registration and granting diplomas. Due notice of all such meetings shall be given by advertisement in one or more public newspapers in the City of Halifax. Every candidate for examination shall satisfy the council that he has served as assistant in a drug store for not less than three years, and during at least one of those years has been employed in the dispensing of prescriptions. He shall before his examination pay to the Registrar a fee of five dollars. Any person failing to pass the examination may be re-examined without further payment of fees; but no person shall be entitled to a re-examination until after the lapse of at least six months from the date of his last examination. Every person passed by the board of examiners shall upon payment of a further sum of five dollars receive a diploma and shall be entitled to be registered and to become a member of the Society at any time. The council may at their discretion accept the diploma of any other competent examining body as sufficient evidence of qualification, and may thereupon issue their certificate. Examinations,  
&c.

3. The Registrar shall make and keep a register of persons who are members of the Society, and shall revise the same annually on or about the first day of January, and publish the revised and corrected list in the month of January in every year in the *Royal Gazette*. He shall receive examination and registration fees as provided elsewhere in this Chapter, and pay over the same to the Treasurer for the general uses of the Society; and shall give certificates under the seal of the Society to persons entitled to them. Register of mem-  
bers.

4. Every member shall upon his registration (except holders of the diploma of the Society as hereinafter mentioned) and thereafter on or before the thirty-first day of December in every year pay to the Registrar such fee, not exceeding four dollars, as the council may determine, and upon every such payment shall receive a certificate under the seal of the Society. Any member failing to make any such payment shall forfeit his place upon the register and shall cease to be a member of the Society, but his name may be replaced at the discretion of the council on payment of arrears of fees. Every holder of the diploma of the Society shall be entitled to a first certificate of registration without fees. Every member doing business Fees from mem-  
bers.

**CHAP. 25.** as a druggist on his own account shall display his certificate in a conspicuous position in his place of business.

Annual meeting,  
when held.

Election of mem-  
bers of Circuit,  
&c.

Authority of  
Council.

It shall be unlaw-  
ful for any per-  
son not register-  
ed to dispense  
medicines, &c.

Proviso.

5. A general meeting of the Society shall be held annually in the City of Halifax on such day in the month of June as the council shall appoint for the transaction of such business as may be required, and at every such annual general meeting six members of the Society shall be elected to be members of the council to serve for two years in the room of six members of the council whose term of office shall then expire, and any vacancy or vacancies which may then exist in the council shall be filled by the election of a member or members to serve for one year. Retiring members shall be eligible for re-election. Persons entitled to vote at any meeting of the Society shall be persons who, at the time of holding such meeting are upon the register of the Society, and no others.

6. The council shall have authority to prescribe the subjects upon which candidates for registration shall be examined and to make by-laws, rules and orders for the holding and regulation of such examinations—and generally in connection therewith, for the regulation of their own meetings and proceedings and those of the Society, and for the appointment and remuneration of the examiners and officers of the Society, and in respect to any other matters which may be requisite for the carrying out of this Chapter. Such by-laws, as well as all rules or regulations made or prescribed for the examination of candidates shall not go into operation until sanctioned by the Governor-in-Council.

7. It shall be unlawful for any person to sell or attempt to sell or have exposed for sale or keep open shop for retailing, dispensing or compounding any of the drugs or medicines named in the schedule A to this Chapter or which may hereafter be added to such schedule by authority of the Governor-in-Council upon the recommendation of the Pharmaceutical Council, or to assume or use the title chemist and druggist, or chemist or druggist, or pharmacist, or pharmacist, or apothecary, or dispensing chemist or druggist in any part of this Province, unless such person shall be registered under this Chapter and unless such person shall have taken out a certificate under the provisions of the fourth section for the time during which he is selling or keeping open shop for retailing, dispensing or compounding such drugs, or medicines, or assuming or using any of such titles. Provided that this section shall not apply to nor prevent the sale of any such articles by wholesale in market packages, nor of any of the articles commonly known as patent medicines.

8. The Pharmaceutical Council, with the concurrence CHAP. 25.  
of the Chairman of the Provincial Medical Board, may Addition to  
from time to time by resolution declare that any poisonous Schedule.  
or dangerous drugs or medicines mentioned in such  
resolution ought to be added to the Schedule A of this  
Chapter, and may recommend that such articles be added  
to such schedule accordingly, and such recommendation  
shall go into force and effect when and so soon as it shall  
have been approved by the Governor-in-Council and  
published in the *Royal Gazette* for the space of one month.

9. Any person transgressing any of the provisions of Penalties.  
the seventh section of this Chapter shall on summary  
conviction before a justice of the peace for the first offence  
incur a penalty not exceeding ten dollars and costs of  
prosecution; and for every subsequent offence shall on  
summary conviction before a justice of the peace incur a  
penalty of twenty-five dollars and costs of prosecution.  
Every such penalty when collected shall be paid to the  
treasurer for the general purposes of the Society.

10. In any prosecution under this Chapter it shall be Proof on behalf  
incumbent upon the defendant to prove that he is entitled of defendant in  
to sell or keep open shop for compounding and dispensing prosecution.  
drugs and medicines and to assume and use the title of  
chemist and druggist, or other titles mentioned in the seventh  
section of this Chapter; and the production of a certificate  
purporting to be under the hand of the Registrar of the  
Society showing that he is so entitled shall be *prima facie*  
evidence that he is so entitled.

11. No person selling articles in violation of this Sales in violation  
Chapter shall recover any charges in respect thereof in any of this Chapter  
court of law or equity. invalid.

12. All legally registered medical practitioners are Medical practi-  
exempted from the operation of this Chapter. tioners exempt-  
ed.

13. Notwithstanding anything contained in the Act Entitled to the  
for the "Publication of the Consolidated Statutes," Chapter sale of drugs and  
11 of the Acts of 1876, entitled the "Nova Scotia medicines.  
Pharmacy Act," so far as the same is not embodied in this  
Chapter, shall continue in force.

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SCHEDULE.

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A.

Acids: Carbolic, muriatic, nitric, oxalic, hydrocyanic or  
prussic.

Aconite and its preparations.

CHAP. 25. Aconitia.

- Antimony, tartarized or tartar emetic.
- Arsenic, and its compounds and preparations.
- Atropia and its salts.
- Belladonna, and its preparations.
- Cantharides and its tincture.
- Chloroform.
- Chloral-hydrate and croton chloral-hydrate.
- Chloride of Zinc.
- Conium and its preparations.
- Conia.
- Colchicum and its preparations.
- Creosote.
- Croton Seeds and their oil.
- Cyanide of Potassium and all other cyanides.
- Digitalis and its preparations.
- Digitaline.
- Elaterium.
- Ergot and its preparations.
- Essential Oils of bitter almonds, cedar, rue, savin and tansy.
- Ether.
- Euphorbium.
- Goulards extract of lead.
- Henbane and its preparations.
- Hellebore, black, white and green, and their preparations.
- Indian hemp and its preparations.
- Iodine and its preparations.
- Mercury, all poisonous compounds of, including corrosive sublimate, red and white precipitates, and iodides of mercury.
- Morphia and its salts and preparations.
- Nux Vomica and its preparations.
- Opium and its preparations, except paregoric.
- Pink root.
- Phosphorus.
- Podophyllin.
- Savin and its preparations.
- Santonine.
- Scammony.
- St. Ignatius' beans.
- Stramonium and its preparations.
- Strychnia and its salts and preparations.
- Veratria and all poisonous vegetable alkaloids and their salts.

## CHAPTER 26.

## OF BOARDS OF HEALTH AND INFECTIOUS DISEASES.

1. The Governor-in-Council may from time to time make sanitary orders and the same revoke, renew, alter or vary, for the prevention of infectious or contagious diseases, for the relief of persons suffering thereunder, and for the interment of persons who may have died thereof; and such orders may be enforced by penalties therein expressed, not to exceed four hundred dollars for any one offence, and shall be notified by proclamation or be published in the *Royal Gazette*; and the production of any such proclamation or publication shall be evidence of the making, date and contents of such order.

Sanitary orders to be made by the Governor-in-Council.

2. The Governor-in-Council may appoint in any place or district in this Province a Board of Health for carrying such sanitary orders into effect, and may prescribe the other duties of such boards, and in case of vacancies therein may fill the same by new appointments, and shall prescribe the limits of the district within which each such board shall exercise its powers. Any member of the board after being duly summoned by the chairman to a meeting who shall fail to attend shall be liable to a penalty of not exceeding five dollars for each failure, to be recovered as a debt before any justice of the peace by anyone who shall sue therefor.

Boards of health how appointed.

Penalty for non-attendance.

3. The Municipal Councils of the several municipalities throughout the Province, and the City Council in the City of Halifax, may from time to time appoint health wardens for the said city and for the several townships and districts, who in the day time may enter and examine all houses, buildings and places, and all vessels and boats, and report their condition to the Boards of Health. They shall carry out all orders of any such board for cleansing any house, building, place, vessel or boat, or for the preservation of public health, the maintenance of cleanliness, and the prevention of contagion or infection. In case the Municipal Council or the said City Council shall not appoint such health wardens the Board of Health shall appoint them.

Appointment of Health Wardens and their duties.

4. Any such board may by order in writing cause any house, building, place, vessel or boat to be fumigated or otherwise purified, and may cause anything dangerous to the public health to be removed or destroyed when necessary.

Powers of Board.

## CHAP. 26.

Fine for warden's refusal to accept office, and for mis-conduct.

Duration of appointment, &c.

Cases of plague or imminent danger, how provided against.

Powers as regards removal of sick persons, &c.

General vaccination, how ordered and provided for.

Returns of poor persons vaccinated; remuneration.

Penalty for bringing infected persons into Province.

5. If any health warden, upon being notified of his appointment, shall refuse to accept the office, or when accepted shall refuse to discharge the duties thereof or to comply with any sanatory orders to him communicated he shall forfeit twenty dollars, and another shall immediately be appointed in his place; but no appointment of health warden shall continue for more than one year, nor shall any person be bound to serve oftener than once in four years.

6. If any infectious plague, disease or distemper shall have been introduced, or there shall be imminent danger of its introduction into any place, the Board of Health shall assemble and make sanatory orders as occasion may require, with penalties as in the first section mentioned, and may appoint persons to enforce the same, and thereupon copies of such orders shall be forthwith transmitted to the Provincial Secretary's office, and the same, until altered or amended by the Governor-in-Council, shall continue in force.

7. Any Board of Health may order to be removed from any dwelling house or other place any person sick with any contagious or infectious disease to any house or place proper for that purpose; and if any person be sick with contagious or infectious disease in any house or place, and such person cannot be removed without danger to his life—to be certified by a duly qualified medical practitioner—then the Board of Health may cause such house or place or any contiguous house or place to be vacated by other occupants for such time as the Board shall deem necessary for the safety of the public.

8. The Council of any Municipality at any regular or special meeting or the City Council of Halifax, on requisition from the Board of Health, or whenever they think it necessary, may order a general vaccination in any county or any part thereof, and may make orders for providing for the expense of the vaccination of such poor and indigent persons as are unable to pay therefor.

9. All persons who shall vaccinate the poor and indigent, as above, shall return to the Municipal Council or to the City Council, along with the particulars of their accounts duly attested to, the names and ages of the persons vaccinated and the dates of their vaccination, and such accounts when examined and allowed shall be assessed for and paid as other municipal or city charges are.

10. Any person who shall knowingly bring into this Province any person sick of any infectious or contagious disease dangerous to the public health, without permission from a Board of Health in the county where brought, or who shall knowingly land in any part of the Province any

person so sick, from any vessel or ship, without such permission, shall be fined in a sum not less than one hundred nor more than four hundred dollars. CHAP. 27.

11. Whenever any person shall become sick of small-pox or malignant cholera in any dwelling house, vessel or other place in any city, town or district, it shall be the duty of the proprietor or other person in charge or possession of such house, vessel or place to display in some conspicuous place therein a yellow flag, not less than twelve inches square, and to keep the same displayed during the prevalence of any such infectious disease. All expenses in carrying into effect the objects herein expressed shall be borne by the respective Boards of Health in such city, town or district. Flag to be displayed on house in case of infectious disease.

12. The reasonable expenses already incurred or hereafter to be incurred by any Board of Health in carrying out the provisions of this Chapter, including all medical attendance and services bestowed and performed and medicine supplied by physicians when required by any Board of Health to be bestowed, performed and supplied under the provisions of this Chapter, shall be a municipal or city charge, and shall be assessed by the council, and levied and collected in the same manner and at the same times as the ordinary municipal rates. Expenses of Board to be a municipal charge.

13. Every person violating any provision of this Chapter or disobeying any sanitary order made thereunder shall incur a penalty not exceeding four hundred dollars. Penalty for violating provisions of this Chapter.

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## CHAPTER 27.

### OF NUISANCES.

1. The Municipal Council of any Municipality shall appoint health inspectors and define the limits of their respective jurisdictions, and fix the time, not to exceed one year, for which such appointment shall be in force. All such inspectors shall be sworn into office. Health inspectors, how appointed, duration of office.

2. Every board of health, and in places where none exist three or more health wardens, and where neither exist the Municipal Council shall constitute a court under this Chapter, and all orders by the court shall be forthwith executed, notwithstanding any appeal therefrom. Court, how constituted.

3. Health inspectors for the purposes of this Chapter shall have charge of all streets, highways, passages, vessels, wharves, docks, wells, markets and market places, common sewers, drains, vaults, privies and other places, and shall Powers of inspectors.



CHAP. 27. cause all nuisances and filth to be removed therefrom or destroyed, and may open and enter all places where noxious substances dangerous to the public health may be reasonably suspected to exist, subject nevertheless to the control of the commissioners of streets, if any there be, in all things relating to public streets, sewers and drains within their jurisdiction, and to the control of the special court in all other matters.

Duties of inspectors.

4. Health inspectors shall execute and enforce all sanitary orders to them directed under this Chapter or the several chapters relating to infectious diseases and rabid animals.

Their compensation and how provided.

5. Every health inspector shall be entitled to such adequate compensation for his services and for charges incurred about his duties as the Municipal Council shall allow, and after deducting any sum collected and received under this Chapter, the balance, if any due him, together with all other necessary charges and expenses incurred under this Chapter, shall be added to the apportioned assessment upon such district or place, and assessed and levied thereon, exclusively, and collected as the county rates now are.

Dwelling houses and their conveniences; penalty for not providing.

6. Every dwelling house within the City of Halifax; or elsewhere within the limits of a health inspector, shall be furnished with a suitable underground drain for carrying off waste water, also with a suitable privy and underground vault attached thereto; and the owner of such dwelling house who shall neglect to provide the same shall forfeit a sum not exceeding twenty dollars.

Privies and vaults, how to be constructed.

7. All privies and vaults shall be built so that the inside shall be at least two feet from the line of the adjoining lot, unless by consent of the owner thereof in writing, and shall be at least two feet distant from every street, lane, court, square, public place, or public or private passage way. There shall be no communication between a privy and any public sewer or drain. Every vault shall be tight, and the contents shall not be allowed to be within two feet of the surface of the ground; but the special court may give other instructions relative to their construction.

Privies and vaults, how cleansed when offensive.

8. When any privy or vault shall be reported offensive by the health inspector, the same, within a reasonable time after notice in writing to that effect given to the owner or his agent or the occupant of the land where situate, may be ordered by the special court or health warden to be cleansed and disinfected at the expense of the owner, agent or occupant, and in case of neglect the same shall be done under the orders of the health inspector, who shall recover double the expense from the owner, agent or occupant as a private debt.

9. No vault or privy shall be emptied without a CHAP. 27. permit from the health inspector where such is appointed, and in no case between the fifteenth day of June and the fifteenth day of September, unless by order of the special court, and then only in cases where it is absolutely necessary.

Privies and vaults, how and when to be emptied.

10. All waste water shall be conveyed through drains underground to a common sewer, or to such reservoir as the health inspector shall appoint.

Waste water how disposed of.

11. When it shall appear to the special court that any tenement used as a dwelling house is so unfit for that purpose that the public health is endangered thereby, the court may make an order in writing for its being vacated within a reasonable time to be therein prescribed, which order shall be served upon the inmates or left at such dwelling house; and in case of disobedience thereto or of a re-occupation of the dwelling house without a permit to that effect, the court may direct a warrant to the sheriff or constables or health inspectors to enforce compliance with the terms of such order.

Dwelling houses how vacated when public health in danger.

12. Whenever it shall appear to the special court that any cellars, lots or vacant grounds are in a state likely to endanger the public health they shall cause a notice to be given to the owners or the occupants if any, and if there are no occupants and the owners do not reside within the jurisdiction of the court, may give notice by advertisement in one or more public newspapers, if any be there printed, or by posting the same, publicly requiring such owners or occupants to remove such cause of complaint as in such notice prescribed; and in case of neglect the court shall order the same to be removed, and double the expense shall be recovered by the health inspectors from the owners or occupants of the land.

Cellars and vacant lots how cleansed.

13. No person unless specially licensed in that behalf shall put in any place on land or water any offensive matter or thing likely to endanger the public health, under a penalty not exceeding twenty dollars for each offence, and if any person shall suffer any such matter or thing to remain upon his premises after notice in writing requiring him to move the same, the health inspector may remove the same under the direction of the special court and at the charge of the owner or occupant of such place, and may recover double the expense as a private debt.

Offensive matter; penalty for allowing; how to be removed.

14. Any justice on the oath of one witness may make an order in writing for the removal, burial or destruction of any offensive substance being or likely to become a nuisance in any place or in any boat or vessel, and may direct the same to be done by the party occasioning the

Justice may make orders for removing or destroying offensive substances.

**CHAP. 27.** offence or by any other party whom the justice shall appoint; and the expense shall be recovered as in the order prescribed.

Penalty for sale of unwholesome food.

15. No person shall sell or offer for sale or have in his possession in a public or private market or any other place for the purpose of sale, any unwholesome, stale or putrid article of food, under a penalty not exceeding forty dollars; and any such article may be forthwith seized and destroyed by the health inspector.

Uncleansed fish and offal, how prohibited.

16. The board of health or Municipal Council may make orders for prohibiting the introduction into any city or town, and for preventing the sale and the offering for sale of any kind of uncleansed fish, and for preventing persons from throwing offal into any place likely to be offensive or dangerous to the public health.

Limits for slaughtering animals to be regulated by municipal councils.

17. The several Municipal Councils may from time to time make orders fixing the extent and limits within which the slaughtering and dressing of animals for food shall be prohibited or conducted, under penalties not to exceed forty dollars for any one offence.

Penalties, how recovered.

18. All penalties and expenses incurred under this Chapter shall be recovered in the name of the health inspector, and if there be none for the place then in the name of the Clerk of the Municipality. In either case such inspector or clerk shall be a competent witness. The proceeds of every prosecution, after first deducting all reasonable charges, shall be paid into the city or municipal funds.

Forfeiture for violation of orders.

19. Any person who shall violate any of the orders made under this Chapter, or shall obstruct any officer acting in discharge of his duty, shall forfeit a sum not exceeding forty dollars.

Limitation of actions; prosecutions removed to Supreme Court how conducted.

20. No action shall be commenced against any person for anything done or omitted under this Chapter unless brought within six months from the date of the offence charged; and whenever any conviction shall have been removed into the Supreme Court at Halifax or an appeal thereto granted, it shall be the duty of the law officers of the Crown to conduct the prosecution or defence, as the case may be, on behalf of the public.

Fish may be sold.

21. Any corporation or individual may open a fish market in any part of the Province or vend fish therein, subject to the provisions of this Chapter.

Penalties and forfeitures enforced.

22. All penalties and forfeitures incurred under this Chapter shall be enforced and imposed by summary conviction before a justice of the peace, except where it is expressly provided herein that any penalty is to be collected as a private debt.

Proviso.

## CHAPTER 28.

## OF RABID ANIMALS.

1. The Municipal Council of each Municipality may from time to time make orders for the protection of persons from the bite of dogs or other rabid or diseased animals, for the destruction of all animals rabid or supposed to be rabid and running at large, and for the prohibition of the sale of the flesh of any animal affected by the symptoms usually attendant on canine madness or otherwise diseased; and may affix penalties for the breach of such orders, not to exceed forty dollars for any one offence.

Municipal Councils to make orders for preventing danger from rabid animals.

2. Any person may kill or destroy any dog or other rabid animal found at large, and may secure and place in confinement all dogs or other animals at large and appearing to be rabid or exhibiting symptoms of canine madness.

Rabid animals at large may be killed, if suspected may be confined.

CHAP. 29.

## TITLE VIII.

## OF EDUCATION.

## CHAPTER 29.

## OF PUBLIC INSTRUCTION.

## THE COUNCIL OF PUBLIC INSTRUCTION.

- Executive Council to form Council of Public Instruction.      1. The members of the Executive Council shall form a Council of Public Instruction, five of whom shall be a quorum.
- Superintendent of Education.      2. The Governor-in-Council shall have power to appoint a Provincial Superintendent of Education, who shall also be Secretary of the Council of Public Instruction.
- Powers of Council of Public Instruction.      3. The Council of Public Instruction shall have power:
- To regulate Normal School.      (1.) To make regulations for the conduct of the Normal School, and to prescribe the conditions of admission and graduation of pupil teachers.
- To divide Province and appoint inspectors.      (2.) To divide the Province into inspectoral districts or divisions, and upon the recommendation of the Superintendent of Education to appoint an Inspector of Schools for each of said districts or divisions.
- To regulate drawing of money.      (3.) To prepare and publish regulations, under which moneys may be drawn and expended and teachers classified.
- Meetings of school boards.      (4.) To fix the time of the semi-annual meeting of each board of school commissioners, and call special meetings of any board when deemed necessary.
- To regulate holidays, &c.      (5.) To regulate the time in session, holidays and vacations of all public schools.
- To prescribe text books, &c.      (6.) To prescribe, with the concurrence of the Superintendent, suitable text-books and apparatus for all public schools, proper books for school libraries, and plans for school houses.
- School registers,      (7.) To prescribe the form of school registers for all public schools.
- To determine appeals from Commissioners, &c.      (8.) To determine all cases of appeal from the decisions of commissioners and trustees, and make such orders thereon as may be required.
- To make regulations for academies.      (9.) To make regulations for constructing, locating and controlling county academies, and to authorize the payment of Provincial grants to the same.

(10.) To receive the recommendation of any inspector for separate apartments or buildings in any section for the different sexes or different colors, and make such decisions thereon as they shall deem proper; but colored pupils shall not be excluded from instruction in the public school in the section or ward where they reside.

CHAP. 29.  
To arrange for separate apartments.  
Colored pupils.

(11.) To make any provisions, not inconsistent with this Chapter, that may be necessary to meet exigencies occurring under its operation.

To provide for exigencies arising under this Chapter.

(12.) To draw from the Provincial Treasury a sum not exceeding sixteen hundred dollars for the establishment of school libraries, on the condition that any section raise a sum equal to the amount sought from the Council (consideration being given to poor sections), the books to be selected from a general catalogue authorized by the Council, and the libraries to be managed under uniform regulations prepared by the Council, and at all times to be open to the inspection of the Superintendent, inspectors and examiners.

To draw grant for school libraries.

(13.) To draw from the Treasury, upon the requisition of the Superintendent, a sum sufficient to pay the amount allowed to provincial examiners, and the expenses incurred by the Superintendent in furnishing printed instructions, blank forms and copies of this Chapter, as directed by law; and also five cents a mile towards the travelling expenses of students attending the Normal School.

To draw public grant for examiners, &c.

(14.) To prescribe regulations for the direction of inspectors and to make such provisions for the payment of those officers as may from time to time be deemed proper, due regard being had both to economy and efficiency of service.

To prescribe regulations for inspectors, &c.

(15.) To appoint four qualified persons, to constitute a Provincial Board of Examiners, to examine and report upon the written exercises of all candidates for license to teach in the Public Schools of this Province. The Council shall also have power to prescribe the mode in which examinations shall be conducted, to designate the times and places at which candidates shall present themselves for examination, and to make such further arrangements as may be necessary in order to insure the uniform classification and licensing of teachers. The examiners so appointed shall be paid at the rate of seven cents for each paper submitted for their judgment, and the person appointed to conduct the examination in each county shall be paid a sum not exceeding three dollars *per diem* while actually engaged in the duty.

To appoint Provincial Board of Examiners.

Examiners, how paid.

(16.) To cancel as well as grant teachers' licenses.

To cancel and grant licenses.

## CHAP. 29.

To change commissioners' districts.

Council of Public Instruction to superintend Normal School, make regulations, appoint examiners, &c.

(17.) To make such changes in existing commissioners' districts as may from time to time be found necessary.

4. The Council of Public Instruction shall have the general superintendence of the Normal School, shall prepare and publish regulations under which money shall be drawn and expended and teachers classified, and shall make such general regulations for the guidance of school boards as may seem best fitted to bring about uniformity in their proceedings.

## SUPERINTENDENT OF EDUCATION.

Salary and duties of Superintendent.

5. The Superintendent of Education shall receive an annual salary of two thousand dollars, and four hundred dollars for travelling expenses and contingencies of office. The Superintendent's duties shall be as follows :

(1.) To have, subject to the Council of Public Instruction, the general supervision and direction of the Inspectors, the Normal School, County Academies, Pictou Academy and Common Schools.

(2.) To enforce the provisions of this Chapter and the regulations of the Council.

(3.) To promote the establishment and efficiency of county academies.

(4.) To hold public meetings and institutes of teachers.

(5.) To inquire and report respecting the qualifications of teachers and the management of schools.

(6.) To inspect as often as possible all the county academies, and when directed by the Council of Public Instruction any school receiving Provincial aid.

(7.) To prepare printed instructions and blank forms for all purposes required by this Chapter, and furnish them together with copies of this Chapter and the regulations of the Council, gratuitously to the inspectors, boards of school commissioners, trustees and teachers.

(8.) To make annually for the information of the Legislature a report on the state of the academies and schools subject to his inspection and supervision, accompanied by full statistical tables and detailed accounts of the expenditure of the moneys appropriated under this Chapter, and offer such suggestions on educational subjects as he may deem proper.

Superintendent with inspectors shall apportion county fund and pay Provincial grant.

6. The Superintendent shall, with the assistance of the inspectors, as hereinafter provided, apportion the county fund among trustees and pay the Provincial grants to teachers semi-annually in accordance with the provisions of this Chapter.

7. The Governor-in-Council shall have power to appoint seven or more commissioners for each district, who shall form a Board of School Commissioners, of whom three shall be a quorum. Governor-in-Council to appoint Commissioners.

8. In every county where there are two or more separate Boards of School Commissioners empowered to draw upon one and the same county school fund, there shall hereafter be one Board of Commissioners instead of such separate boards, and the members of the existing boards shall be members of the new board, and any trust or property vested in existing boards shall vest in the new board; provided however that such consolidation of boards shall take place only upon the joint request of the separate Boards of Commissioners at their annual meeting, save when ordered by the Council of Public Instruction. The Council of Public Instruction shall have power to determine the places of meeting of Boards of Commissioners, and each Board of Commissioners shall have power to re-number consecutively the school sections within its district. Consolidation of Boards of Commissioners. Proviso.

9. Each Board of Commissioners shall meet annually on the day appointed by the Council of Public Instruction, and shall elect a chairman at each regular meeting, who shall call a special meeting when required by two members of the board or when directed by the Council of Public Instruction. In case of a special meeting the chairman shall notify the inspector of the same, and if the inspector be unable to attend, the board shall appoint a secretary *pro tempore*, who shall record the proceedings of the meeting, and preserve such record for the inspector, and transact any other necessary business as directed by the board, and in case of the absence of the chairman the commissioners may appoint a chairman *pro tempore*. Meetings of Boards.

10. Each Board of Commissioners shall have power: Powers of Board.

(1.) To create new sections, either directly where none previously existed, or indirectly by the sub-division or re-division of existing sections, provided that in neither case shall such action take effect until formally ratified by the Council of Public Instruction, and to make such alterations in the existing boundaries of contiguous sections as may from time to time be deemed necessary. In all cases coming under the provisions of this section the commissioners shall have due regard to the number of children and the ability of each section to support an efficient school, and all alterations thus made shall take effect at the beginning of the next ensuing school year. Power to create new sections.



## CHAP. 29.

Condemnation of school houses, &c.

(2.) To declare, upon the inspector's report or other reliable information, the school house or the houses or buildings used as such, or the appurtenances thereof unfit for school purposes; such declaration shall be forwarded to the trustees of the section, and the condemnation shall, unless otherwise specified, take effect at the commencement of the next ensuing school year.

To appoint trustees in certain cases.

(3.) To appoint trustees or a trustee for any section in cases as hereinafter provided.

Commissioners may hold real estate in trust.

11. Any person may convey or devise real estate to the commissioners for any district, and duly vest in the commissioners and their successors in office the legal title thereto, in trust for the purpose of erecting and keeping in repair a school house or houses thereon; and the commissioners may sue and be sued in respect thereof, but shall have no control over any school house or houses or such lands as against the trustees of the school section or the inhabitants, other than may be expressed by the conveyance or devise.

Three Commissioners may perform duties prescribed by sections 16 and 50.

12. Each Board of Commissioners shall have power to appoint a committee of not less than three of their number to perform the duties imposed on them by sections 16 and 50 of this Chapter, and such committee when so appointed are hereby authorized to perform such duties.

Special aid for poor sections.

13. Each Board of Commissioners shall at its annual meeting determine what sections under its supervision are entitled to special aid as poor sections during the following school year, and the Superintendent of Education shall allow to the trustees of schools kept in any such section one-third more from the county fund than the allowance to other sections, and teachers employed in such poor sections shall also receive one-third more from the Provincial grant. No section employing a teacher holding a license higher than that of grade D, so called, shall be entitled to receive the special aid provided for poor sections in respect to Provincial grant to teachers. No county shall be entitled to receive as special Provincial aid to teachers employed in poor sections more than three hundred dollars annually, and in case the special grant to such teachers in any county shall for any term exceed one-half of the above sum, namely, one hundred and fifty dollars, they shall be reduced *pro rata* of the amount of such excess.

Boards of Commissioners may unite two or more sections into one.

14. The several Boards of Commissioners shall have power at the annual meeting, by vote of at least two-thirds present thereat, to unite two or more school sections into one school section, on a petition addressed to the Board of Commissioners by a majority of the rate-payers of each section, setting forth that they have agreed among them-

selves as to the terms on which the existing liabilities shall be borne by the rate-payers of the several sections. CHAP. 29.

15. The union shall take effect on the day fixed by law for the next annual school meeting, notice of which meeting shall be issued by the inspector, and such meeting shall elect a board of three trustees for the new section. When union shall take effect.

16. When the annual meeting fails to elect three trustees or to fill the annual vacancy occurring in the trusteeship, or vacancies from other causes then existing, the trustee or trustees shall be appointed upon the written requisition of seven rate-payers in the section, accompanied by a certificate from the inspector of schools that to the best of his knowledge and belief, founded on an inspection of the minutes of the school meeting or of the copy in his possession as hereinafter provided, and if necessary on personal inquiry that the alleged vacancy or vacancies actually exist, by the Board of Commissioners for the district in which the school house is situate or in which a majority of the rate-payers of the section reside; and any board of trustees thus secured shall as soon as practicable convene a meeting of the rate-payers of the section as provided for the annual meeting, and such meeting shall transact all business except the election of trustees required of the annual meeting and in the same manner. When annual school meeting fails to elect trustees, Board of Commissioners shall appoint.

17. Each Board of Commissioners shall have power to exempt from the sectional school rate, either altogether or in part, persons dwelling more than three miles from the school house in the section where they reside or in places too sparsely peopled to maintain public schools, or on islands too distant from the mainland to permit children to attend school; and each such board shall also have power to make such arrangements as they may deem necessary to establish schools on such islands and in such sparsely peopled places for at least four months in the year. Powers of Commissioners as to islands and sparsely peopled districts.

#### TRUSTEES.

18. Each school section shall have a board of three Trustees, and no section shall have more than one board. Three trustees for each section.

19. At the first annual meeting of any section under this Chapter the majority of the qualified voters present shall elect three trustees; and at the second and third annual meetings one of the Trustees elected at the first meeting shall go out of office by ballot, and at each annual meeting thereafter he who has served the longest shall retire from office, and each of the vacancies shall be filled by the election of a new Trustee; provided always that he whose term of office has expired may be re-elected with his own consent, his time of service to date from such Mode of appointing trustees.

CHAP. 20. re-election. No irregularity in the mode of electing Trustees shall invalidate the election, unless formal objection be taken thereto by a qualified voter before the adjournment of the meeting; provided that the person so elected possesses the qualifications required by law for the office of Trustee.

Majority of trustees to be rate-payers. 20. A majority of the trustees shall always be qualified rate-payers of the section, but one trustee may be chosen from the poll-tax payers, authorized as hereinafter provided

Persons ineligible to be trustees. to vote in the election of trustees. No commissioner of schools, inspector of schools or licensed teacher employed in the section shall be deemed eligible to the office of trustees of schools.

Vacancy, how filled. 21. Any occasional vacancy in the Board of Trustees caused by death, removal from the section, insolvency, permanent disability for business, refusal to act, or resignation, or acceptance of official positions declared to be incompatible with the office of Trustee, shall be filled at a special school meeting called by the remaining trustee or trustees. The person elected to fill an occasional vacancy shall hold office only for the unexpired term of the person whose place he is chosen to fill.

Provisions in sections wherein academic institutions, not being county academies, are located. 22. It shall be lawful for the trustees of any section wherein are located academic institutions other than county academies to co-operate with an equal number of persons chosen by the governing bodies of such institutions, in order that the section may secure the educational advantages supplied by such institutions; such combined Board of Trustees to manage the school or schools, as the case may be, in accordance with the provisions of this Chapter.

Trustees with the permission of the inspector of schools may admit pupils from other sections. 23. The trustees of any section, with the permission of the inspector of schools may, in their discretion, admit to school privileges pupils from other sections; and if the trustees shall deem it necessary they may exact from such pupils a reasonable tuition fee.

Trustees to be a body corporate. 24. The trustees of any section shall be a body corporate for the prosecution and defence of all actions relating to the school or its affairs, and other necessary purposes, under the title of "Trustees of School Section No. —, in the district (or districts) of —;" and they shall have power, when authorized by the school meeting, to borrow money for the purchase or improvement of grounds for school purposes, or for the purchase or building of school houses; and all such amounts shall be paid by equal yearly instalments, not exceeding twelve, to be assessed upon the section; and the money so borrowed shall be a charge upon the school section.

25. The trustees in the several counties are authorized to effect insurances on school houses.

CHAP. 29.

Trustees may insure school houses.

26. A trustee may resign his office with the consent in writing of his co-trustees and of the inspector. Without such consent a trustee refusing to act shall forfeit the sum of twenty dollars, to be collected by any rate-payer in the section, such sum to be payable to the inspector or his order, and applied by the board of school commissioners of the county or district as special aid to the erection of school houses. The following among other things shall constitute a refusing to act under the foregoing provision:—Continual refusal or failure to attend the meetings of the board of trustees when notified; failure or refusal to issue the notices required under this Chapter, and failure or refusal generally to perform the duties or exercise the powers imposed or conferred on trustees after a written request shall have been addressed to him by his co-trustees or the inspector of schools to perform or exercise the same.

Trustee may resign.

Trustee refusing to act to be liable to penalty.

What shall constitute a refusal to act.

27. The duties of the trustees shall be as follows:—

Duties of trustees.

(1.) To meet as soon after the annual election or appointment of trustees or a trustee as practicable, and appoint one of themselves or some other person to be secretary to the board of trustees, and to provide him with a suitable blank-book, and instruct him to keep therein and carefully preserve a correct record of all the doings of the board.

To meet and appoint a secretary

(2.) To take possession of and hold as a corporation all the school property of the section or which may be purchased for or given to it for the use or support of common or academic schools; provided always that they shall not interfere with any private rights or the rights of any religious denomination.

To hold school property.

(3.) To lease or rent lands or buildings if necessary for school purposes for a period of not less than five months, or if the section be poor not less than three months.

To lease or rent lands.

(4.) To determine the sites of school houses, subject to the sanction of the three nearest commissioners residing out of the section; and in case the three nearest commissioners do not agree as to the site of a school house, the matter shall be referred to the board of commissioners for the district or county in which the school is situate, and their decision shall be final. In cases of border sections where the three nearest commissioners do not agree, it shall be referred to the inspector of the county in which a majority of the rate-payers of such border section reside, subject to an appeal to the Superintendent of Education, whose decision shall be final.

To fix sites of school houses.

Proviso.

## CHAP. 29.

To provide school accommodation as follows.

(5.) To provide school privileges free of charge for all persons resident in the section five years of age and upwards who may wish to attend school, and, when authorized by the school meeting, improved school accommodations; such accommodations to be provided as far as possible in accordance with the following arrangements:—

(a.) For any section having fifty pupils or under, a house with comfortable sittings for the same, with one teacher.

(b.) For any section having from fifty to eighty pupils, a house with comfortable sittings for the same, and a good class-room, with one teacher and an assistant.

(c.) For any section having from eighty to one hundred pupils a house with comfortable sittings for the same and two good class-rooms, with one teacher and two assistants; or a house having two apartments, an elementary and preparatory, with two teachers: or if one commodious building cannot be secured, two houses may be provided in different parts of the section, with a teacher in each; one being devoted to the younger children, or elementary department, and the other to the more advanced or preparatory department.

(d.) For any section having from one hundred to one hundred and fifty pupils a house with two adequate apartments, an elementary and a preparatory, and a good class-room, accessible to both, with two teachers, and if necessary an assistant; or if the section be long and narrow, three houses may be provided, two elementary and one preparatory, the former being located towards the extremes of the section, and the latter at or near the centre.

(e.) For any section having from one hundred and fifty to two hundred pupils a house with three apartments, an elementary, a preparatory and a high school, and at least one good class-room, common to the two latter, with three teachers, and if necessary an assistant: or if necessary, separate houses may be provided for the different departments in different parts of the section.

(f.) And generally, for any section having two hundred pupils and upwards, a house or houses, with sufficient accommodations for different grades of elementary and preparatory schools, so that in sections having six hundred pupils and upwards the ratios of pupils in elementary, preparatory and high school departments shall be respectively about eight, three and one.

Disposal of school land.

28. Whenever it may be deemed desirable to change the site of a school house, or to dispose of school lands by sale or exchange, such lands may be disposed of by the

trustees, who are hereby authorized to purchase or accept other lands or sites in lieu thereof. CHAP. 29.

29. In any section having more than one department under one roof, or under separate roofs, the trustees, by the aid of the teachers or otherwise, shall regulate from time to time the attendance of pupils in the several departments according to their attainments. Trustees shall regulate attendance of pupils in several departments.

30. If in any section the Council of Public Instruction shall permit separate departments under the same or separate roofs for pupils of different sexes or different colors, the trustees of the section shall in this as in other cases regulate attendance on the several departments, according to the attainments of the pupils. Shall regulate attendance when Council permits separate departments.

31. It shall further be the duty of the trustees :

(1.) To contract with and employ a licensed teacher or teachers for the section, and where necessary licensed (or unlicensed) assistants for a period of not less than five months; or if the section be poor, not less than three months. Trustees' further duties.  
Shall employ teachers.

(2.) To notify as they may deem proper the inhabitants of the section of the opening or re-opening of the school or schools, so that pupils may present themselves for classification without delay. Give notice of opening of schools.

(3.) To furnish, in case the annual meeting shall have determined to raise money for the purchase or building of school houses, or for the purchase or improvement of school grounds by assessment, the town clerk, or the clerk of the peace for the county in which the section or a portion of it may be situate, a list of the inhabitants of the county resident in the section liable to be taxed; and the town clerk or the clerk of the peace shall affix the amount of property for which each is assessed according to the county assessment roll for the year; and the town clerk or the clerk of the peace, as the case may be, shall be entitled to receive from the trustees a fee of twelve cents for every list so furnished where the number of rate-payers in the section does not exceed twelve, and of twenty-five cents where such number exceeds twelve. Furnish town clerk or clerk of peace with list of rateable inhabitants of section.  
Clerk's fee.

(4.) To provide by assessment, as set forth in section 45, for the purchase of suitable grounds and the purchase or erection of a house or houses according to the decision of the school meeting, to select the design of building most suitable and let out the work, the amount required being levied and collected in equal portions from year to year, not exceeding five years, with any interest accruing, until the whole shall have been raised. Provide for erection of school houses.

- CHAP. 29. (5.) To visit the school at least four times in each year, and to be present when practicable at the semi-annual examinations and the visitations of the inspector.
- Visit schools.
- Expel or suspend pupils. (6.) To expel from school any pupil who is persistently disobedient to the teacher or addicted to any vice likely to injuriously affect the characters of other pupils, or to suspend any such pupil until there shall be indications of reform.
- Health of school. (7.) To adopt efficient measures for the preservation of the health of the school.
- Notice of school meetings. (8.) To give proper notice of all annual and special school meetings required to be held under the provisions of this Chapter.
- Annual report. (9.) To present at the annual school meeting a report of the educational operations of the section for the year then ending. This report shall contain an estimate of the financial requirements of the ensuing year, and be accompanied by a full account, previously audited as hereinafter provided, of all school moneys received and expended since the last annual meeting.
- Return of state of school. (10.) To prepare or have prepared a true return of the state of the school according to the form drawn up for that purpose by the Superintendent, and if there is more than one department in the section a return for each, indicating the grade of each department, and to lodge the same, duly certified by the teacher or teachers, at the district office of the inspector on or before the day fixed for the same by the commissioners for the district; and if the section be a border section the trustees shall present a complete return to the inspector of schools of that district in which the school house is situated, marking the same as a border section, and to the inspector of the other district a supplementary return containing the number of enrolled pupils belonging to each district and the grand total days' attendance made by the pupils of each district.
- Forward minutes annual meeting to inspector. (11.) To forward to the inspector of schools, within one week after the annual school meeting of the section, a copy of the minutes of the meeting, duly signed by the chairman and secretary thereof.
- May suspend or dismiss teachers. Notification of same. 32. Trustees shall have power to suspend or dismiss from their employ any teacher for gross neglect of duty or immorality, and they shall immediately forward a written statement of the facts to an acting member of the board of commissioners for the district, and they shall also forward a statement of their proceedings to the Superintendent; and the pay of any such teacher shall thereupon cease, unless otherwise ordered by the board of commissioners upon the appeal of the teacher; but he or she shall be paid
- Pay of such teachers.

ratably up to the time of his or her suspension or dismissal. CHAP. 29.

33. On proof of inability to pay any school assessment or poll tax, the trustees shall have power to exempt any person in part or altogether from the payment thereof without prejudice to the rate; and the trustees shall present a statement of any such exemptions in their report to the annual school meeting. May exempt from school tax.

34. Whenever a majority of the rate-payers of any section shall request it in writing, the trustees shall convene a special meeting of rate-payers for the purpose of voting money or adding to any amount previously voted for any purpose authorized by this Chapter. Also independent of any such requisition, the trustees shall have authority to call a special meeting for the aforementioned purpose, and generally to call special meetings for the consideration of subjects deemed of importance to the educational interests of the section, notice being given in all cases according to the mode prescribed for annual school meetings. May call special meetings.

35. Whenever any person has obtained a judgment in the Supreme or County Court against the trustees of any school section in their corporate capacity, the trustees of such section shall, during the year following the date of such judgment, and they are hereby authorized to, assess on the rate-payers of said section a sufficient sum to pay such judgment, which sum shall be collected by said trustees and paid over to such judgment creditor. Payment of judgment against trustees.

#### SECRETARY OF TRUSTEES.

36. The secretary of the trustees shall give a bond to Her Majesty, with two sureties, in a sum at least equal to that to be raised by the section during the year, for the faithful performance of the duties of his office, and the same shall be lodged by the trustees with the clerk of the municipality for the county or district. Bond given by secretary of trustees.

37. The secretary shall be entitled to receive five per cent. commission on all sums collected by him or under his direction for the support of the school or schools, including expenditure for rents, repairs, furniture, outhouses, fuel, maps, apparatus and salaries, except in cases where payment shall be voluntarily made, when he shall make a deduction to persons making such payment of two and a half per cent. from his commission; and he shall be entitled to two and a half per cent. on all sums collected by him or under his direction for the purchase or erection of a new school house or houses and for the purchase or improvement of school house grounds. A payment shall be considered to have been made voluntarily if made Secretary's commission.



CHAP. 29. within twenty days after the collector's roll is made up and posted up in at least three public places in the district. The sum or sums on which the secretary shall be entitled to receive commission under provision of this section shall be taken to mean only the moneys directly levied on section and collected in accordance with vote of annual meeting, and shall not include county fund apportionment or Provincial grant of any kind.

Duties of secretary.

38. The secretary's duties, to be performed under the direction of a majority of the trustees, either by the secretary in person or under his direction, shall be as follows :

(1.) To keep the accounts, moneys and records of the board, and to collect and disburse all school moneys.

(2.) To keep the school house or houses in good repair and supply the same with comfortable furniture, outhouses, fuel, prescribed school books, maps and apparatus.

(3.) To promptly supply to the teacher or teachers copies of the school register prescribed by the Council of Public Instruction, and carefully preserve the old registers.

(4.) To keep a faithful record of any school books, maps or apparatus that may at any time be procured for the use of the section.

(5.) To present the teacher with a copy of the inventory of the school property under his or her charge, and renew the same from time to time.

(6.) To post up the collector's roll in the manner provided for in section 37.

(7.) To take due care of the library books of the section, and see that the same are managed in conformity with the regulations of the Council, and generally to transact any business of the board as directed by a majority of the trustees.

#### MODE OF SUPPORT.

39. Legally qualified teachers employed in the common schools in accordance with this Chapter shall receive from the Provincial Treasury according to the following rates for the school year :

Grade B. All teachers holding licenses of grade B, the sum of one hundred and twenty dollars each.

Grade C. All teachers holding licenses of grade C, the sum of ninety dollars.

Grade D. Female teachers grade E. All teachers holding licenses of grade D, the sum of sixty dollars each, and female teachers holding licenses of grade E, the sum of forty-five dollars each. Every teacher shall receive semi-annually one-half of the amount mentioned in connection with his or her grade in the

foregoing scale, or ratably according to the time he or she shall have satisfactorily taught a public school. CHAP. 29.

40. The distribution of the moneys payable under the authority of this Chapter to the respective counties for common schools shall be made semi-annually through the inspectors to the respective teachers and assistants lawfully employed by the trustees according to the number of days the schools have been in session and the grade of license held. Moneys distributed semi-annually.

41. Assistant teachers, if provided with separate class rooms and regularly employed at least four hours in each day, shall receive two-thirds the amount granted to principal teachers of the same grade. Proportion paid assistant teachers.

42. Nothing in any preceding sections shall be construed to authorize the employment of unlicensed teachers in any of the public schools of this Province. Employment of unlicensed teachers not authorized.

43. The clerk of the municipality in each county, except as hereinafter provided in relation to the City of Halifax, shall add to the sum annually voted for general municipal purposes at the regular meeting of the council a sum sufficient, after deducting costs of collection and probable loss, to yield an amount equal to thirty cents for every inhabitant of the municipality, according to the last census preceding the issue of the municipal rate-roll, and the sum so added shall form and be a portion of the municipal rates. One-half the sum thus raised shall be paid semi-annually by the treasurer upon the order of the Superintendent of Education. Clerk of the municipality for each county (City of Halifax excepted) shall add a sum equal to thirty cents a head to amount annually voted for county purposes.

44. One-half of the amount provided to be raised annually as aforesaid shall, at the close of each half-year, be apportioned to the trustees of schools conducted in accordance with this Chapter, to be applied to the payment of teachers' salaries, and each school shall be entitled to participate therein at the rate of twelve and one-half dollars per term for each licensed teacher employed, and the balance of the municipal fund shall be distributed among the schools according to the average number of pupils in attendance and the length of time in operation, but shall receive no allowance for being in session more than the prescribed number of days in any one half year. One-half to be paid half-yearly to order of the Superintendent of Education.  
One-half to trustees of schools conducted under this Chapter.

45. Any sum required by any section over and above the sums provided by the Province and municipality for the support and maintenance of a public school or schools during the ensuing year, including the purchase or improvement of school grounds, the purchase, erection, furnishing, cleaning or repairing of school houses and outbuildings, rent of buildings or lands, insurance on school property, the purchase of fuel, prescribed school books, maps and apparatus, the payment of interest on money borrowed by the section, teachers' salaries or any other expenses required Ratio in which schools shall participate.  
When majority of rate-payers of section at a regularly called school meeting determine on extra sum necessary for support of schools, the same shall be raised by poll-tax, and if necessary by assessment on real and personal property of section.

CHAP. 29. in providing an efficient public school or schools in accordance with this Chapter, shall be determined by a majority of the rate-payers of the section present at a regularly called school meeting, and any amount so determined shall be a charge on the section and shall be levied as follows: Every male person between the ages of twenty-one and sixty, having resided in such section for the period of six months next previous to the holding of such regular school meeting, shall pay the sum of one dollar as a poll-tax. The balance of the sum authorized to be assessed shall be levied on the real and personal property within the municipality of the residents of the section according to the municipal rate-roll. Nothing herein shall render any person liable to pay more than one poll-tax in any school year. The trustees shall furnish to their secretary a list of the assessments under this section, with instructions in writing thereon signed by the trustees, authorizing and directing such secretary to collect from the persons therein named the amounts set opposite their names, and the secretary shall demand the several amounts from the persons so assessed, and in default of payment the same shall be collected under and by virtue of the Chapter of the Revised Statutes, "Of Municipal Assessments;" and the trustees shall return such assessment to the regular sitting of the municipal council where appeals shall be had and determined. Provided that when on such appeal it shall be ordered that any part of such rate shall be refunded to the appellant, such order shall be on the trustees of the school section appealed against, who are hereby required to re-pay the same to the party aggrieved out of any funds in their hands, and if there are no funds on hand they shall assess for the same at the next annual meeting or at any special meeting called for that purpose. The words real and personal property within the municipality of the residents of the section in this section shall apply to property lying in the City of Halifax the owners whereof reside in Dartmouth or other school sections in the Municipality of Halifax.

Rates, how collected.

Proviso.

Definition.

Payer of poll-tax qualified to vote at election of trustees.

46. On depositing with the secretary of trustees previous to or at any annual school meeting the sum of one dollar, any person liable to pay such poll-tax, and having paid all poll-taxes previously imposed, including that of the year just closing, though not rated in respect of real or personal property, shall be qualified to vote in the election of trustees at such meeting and at any other meeting held for the election of trustees within a year from such deposit, except the same be refunded as hereinafter provided. Money deposited as above shall be

refunded on demand in every case where no assessment is authorized by such meeting; otherwise it shall be retained as payment of the poll-tax of the depositor. CHAP. 29.

47. Each clerk of the municipality shall immediately upon making up the rate-roll in each year, notify the Superintendent of Education and the inspector of schools of the sum provided by municipality assessment for the support of schools during the ensuing year. Clerk of the municipality shall notify Superintendent of Education and inspector of sum assessed.

48. One-half the amount assessed as a county rate in the several municipalities for the support of schools shall be advanced from the Provincial Treasury in May of each year. One-half of county rate shall be advanced from Province every May.

49. Where counties are divided into municipalities having separate councils, the term "county" in this Chapter shall, for all the purposes of the Chapter, be held to include and apply to such municipalities as fully as if these had been specially mentioned therein. Where counties are divided into municipalities term "county" shall include municipalities.

50. In any school section where sectional assessment shall be required to support a free public school, and the rate-payers of such section after legal notice has been given in accordance with the provisions of this Chapter shall neglect or refuse to make adequate provision for such school, the trustees of the section shall name the sum of money which they deem sufficient therefor; and such amount shall be submitted to the Board of School Commissioners for the district and be subject to their approval. If the board approve thereof, the trustees shall have power to levy and collect the sum so submitted and approved of in the same manner as if it had been voted for school purposes at a regular school meeting called for the purpose. Where rate-payers do not make necessary assessments.

51. Property situate in any school section and owned by a non-resident of the county, the same not being otherwise liable to sectional assessment, shall be liable to assessment in the section in which it is so situate. Assessment of property of non-residents.

52. The assessment of any person who shall subsequently die, or become insolvent, or assign his property liable to the assessment, shall be a charge upon his estate, to be paid by his executors, administrators or assignees; and in default of payment they or either of them may be held personally liable under the warrant, unless they or either of them shall make oath before a justice of the peace stating that there is not in their possession or under their control belonging to such estate sufficient money or other property to satisfy such assessment. Assessment charge on estate in hands of representatives.

53. In every case where between the making of the county assessment roll for any year and the levying of any sectional assessment according to such roll, any person rated therein in respect of real or personal property, shall In case of transfer between making roll and levying assessment collected from holder at time of levying.

CHAP. 29. remove from the section, having conveyed, leased, or otherwise disposed of such property, such assessment shall be a charge on the property and may be collected from the owner or person in possession of the same at the time of levying such assessment, whose name shall be inserted in the affidavit and warrant for collecting in the same manner as if such person had been originally assessed in respect of such property and his name were on the assessment roll.

Property held by executors, trustees, &c., where assessed.

54. Property held by executors, administrators, trustees, or assignees at the time of the making of the county assessment roll for any year, shall be liable to be assessed in all assessments levied according to such roll in the section in which the original owner of such property resides or last resided; but property held in trust for heirs being minors shall be liable to assessment in the section in which such heirs being minors, or a majority of them, may be in attendance at a public school, provided such section shall be in the county in which such property is situate. In default of payment of any assessment levied under this section the same may be collected as provided in the case of unpaid assessments under the fifty-second section,

Assessment of property held in trust for heirs being minors.

Exemption of ordained minister and unmarried woman or widow.

55. Any regularly ordained minister occupied in ministerial work and any unmarried woman or widow shall be exempt from sectional assessment on all property to the value of five hundred dollars, but shall be liable for any excess of that sum.

Exemption of bedding, &c.

56. All beds, bedding, clothing, stoves, cooking utensils and the last cow of any person against whom a warrant of distress or other legal process shall be issued to recover the rates assessed for school purposes, shall be exempt from the operation of such warrant or other legal process.

Property of corporation or company.

57. Real and personal property situate within a school section and belonging to a corporation or company shall be subject to sectional assessment; and the rates shall be payable by the agent to the extent of the funds in his hands or under his control at the time of the demand, as if assessed upon him personally, and shall be chargeable by the agent to the principal.

Property of firm, corporation, &c., assessed in name of firm, corporation, &c.

58. It shall be the duty of assessors to assess all the ratable property belonging to any association, company, or firm in the name of the association, company, or firm, and not in the name of the agent or of any single member; and in assessing such property it shall be the duty of the assessors to have regard to the boundaries of school sections, and in every case to return with their valuation of such property the name or designation of the school section in which it lies; and where the same association, company,

or firm holds property in two or more school sections, to CHAP. 29. specify distinctly their valuation of the portion in each, also of the portion, if any, not included in any school section.

59. The assessment of such property shall be in and for the benefit of the section wherein it lies; and shall extend and apply to all ratable property held by any association, company, or firm, whether incorporated or otherwise; that is to say, the assessment payable directly by the association, company, or firm in respect of any property shall be paid in and for the benefit of the section where the property lies; and if any portion of the ratable property of any association, company, or firm lies in a place not embraced in any school section, such portion shall be treated in all respects as if situate in the section where the chief works and business of the association, company, or firm are established.

Assessed for benefit of section where situate,

60. In any case where owing to neglect on the part of the assessors the county roll does not afford the information necessary for the purposes of this Chapter, the trustees shall request the clerk of the municipality to refer the roll back to the assessors for correction or amendment.

Roll may be referred to assessors.

61. There shall be granted annually a sum not exceeding six thousand six hundred dollars towards the support of county academies when constructed, located and conducted in accordance with the regulations of the Council of Public Instruction, each academy to receive a sum equal to the amount of assessment levied for the year for the support of the schools of the section in which the academy is situated, exclusive of all moneys levied for building purposes, provided that no academy shall receive for any year more than six hundred dollars.

Provincial grant to county academies.

62. The counties named in the following schedule shall be entitled to share in this grant:

Counties entitled to share in grant

SCHEDULE.

County of Annapolis.	County of Lunenburg.
" Cape Breton.	" Queens.
" Cumberland.	" Richmond.
" Digby.	" Shelburne.
" Guysboro.	" Victoria.
" Inverness.	" Hants.
" Yarmouth.	" Kings.
" Antigonish.	

SCHOOL MEETINGS.

63. The annual school meeting for the election of trustees or a trustee shall be held in the school house of the section, or if it be not commodious, or if its use cannot

Annual school meeting, when held.

**CHAP. 29.** be obtained, or if there is none, in any other convenient building, on the last Monday in September, the meeting to be called by the trustees, or where none exist by the inspector, by notices posted in three public places within the section five days previously, signed by the trustees or the inspector, as the case may be.

Notice.

Meeting, how organised.

64. At the annual school meeting the majority of the rate-payers, male and female, of the section present shall elect from their own number or otherwise a chairman to preside over the meeting and a secretary to record its proceedings; and the chairman shall decide all questions of order, and shall take the votes of rate-payers only, and give a casting vote in case of an equality of votes; and the rate-payers shall, by a majority of those present, decide what amount shall be raised by the section to supplement the sums provided for public schools by the Province and county, and shall also decide whether any and what sum shall be raised for the purchase or building of school houses, for the purchase or improvement of school grounds, or for general school purposes.

Rate-payers to decide amount to be raised by section.

Right to vote challenged.

65. If any person offering to vote at an annual or other school meeting shall be challenged as not qualified, the chairman presiding at such meeting shall require the person so offering to make the following declaration:—

Form of declaration.

“I do declare and affirm that I am a rate payer of this school section; that I have paid all sectional school rates for which I have been assessed up to the close of the school year which ended on the 31st of October last, and that I am legally qualified to vote at this meeting.”

Penalty for false declaration.

Every person making such declaration shall be permitted to vote on all questions proposed at such meeting, but if any person shall refuse to make such declaration his vote shall be rejected; provided always that any person who shall wilfully make a false declaration of his right to vote shall be punishable by fine or imprisonment, at the discretion of the court, or by a penalty of not less than five nor more than ten dollars, to be recovered by the trustees of the section for its use as a private debt.

Majority of owners of school house may sell at meeting, &c.

66. In all cases where a school house has been built within any section and is owned in shares, it shall be competent for the majority in interest of the owners of shares to sell and dispose of the same, together with the land on which it is situate (provided such land belongs to the same parties who own the house) to the section, at any meeting duly held after ten days' notice of the object thereof, at such price as the meeting shall determine, or as may be realized at a public sale thereof duly advertised; and the proceeds of sale shall be divided among the

proprietors in proportion to their shares in interest in the property. CHAP. 29.

67. The rate-payers present at each annual meeting shall appoint two competent persons to act as auditors for the ensuing year. The auditors shall at least three days before the next annual meeting receive from the board of trustees or their secretary all the accounts, vouchers, agreements, etc., connected with the year's business, and shall examine into and decide upon the legality and correctness thereof and report thereon to said ensuing annual meeting. Should the auditors or either of them object to the legality or correctness of the trustees' accounts, the matters in dispute shall be referred for final decision to the annual meeting itself.

Auditors, how appointed.  
Duties of auditors.

68. In case an annual meeting fails for any reason to appoint auditors for the ensuing year, the next ensuing annual meeting shall have authority to appoint auditors to examine accounts of preceding year and to report thereon either before close of annual meeting or at an adjourned session held for that purpose.

Provisions in case annual meeting fails to appoint auditors

69. If for any reason the annual school meeting shall not be held at the time fixed by this Chapter, it shall be the duty of the trustees or trustee remaining in office to give notice to the inspector of schools for the district within which the section is situated of the failure to hold the annual meeting at the legally appointed date, said notice to be given if possible within a fortnight of such date, and it shall be the duty of the inspector of schools, on receipt of such notice, to fix a date at which a special annual meeting shall be held, which date shall not be later than the fourth Monday of October; such notice of such special annual meeting to be given as is provided in the case of regular annual meetings. In case there are no trustees in a section the inspector of schools shall have authority to call a special annual meeting under the foregoing provisions and limitations on the requisition of seven rate-payers.

Provisions in case annual meeting has not been held at the time fixed by this Chapter.

70. Notices of all special school meetings called under the provisions of this Chapter shall distinctly specify the object or objects of said meetings, and it shall not be lawful to transact thereat any business not referred to in said notices.

Notice of special meetings to state business.

71. The secretary of trustees in each school section in every county of the Province shall make up the school accounts relating to such section at least three days before the annual meeting, and shall forward such accounts, together with all vouchers and papers relating to the financial affairs of the section to the auditors herein provided

Secretary of trustees to make up accounts and forward them to auditors.



CHAP. 29. for, who after due examination of the same shall report thereon at such annual meeting.

## INSPECTORS.

72. It shall be the duty of the inspector—

Inspector's duties.

To act as clerk of commissioners to examine school returns, &c.

(1.) To act as clerk of each board of school commissioners within his district and to examine at the close of each term the school returns received from the trustees of the various sections of his district, and to prepare therefrom and transmit to the Superintendent of Education, according to forms received from that officer, an abstract of the number of legally authorized teaching days taught by each duly licensed teacher in his district, together with the grade of license held by each teacher; also to prepare and forward at the same time a statement of the apportionment of the county school fund for the half year on the basis defined in section 44 of this Chapter. Special reports shall be made of cases of false returns and of schools conducted in condemned buildings. It shall be the further duty of the inspector to report to the Superintendent of Education the names of teachers notoriously remiss or inefficient in the discharge of their duties, and of sections failing to make reasonable provision for the health, comfort and progress of the children attending school, and the Superintendent of Education may, with the sanction of the Council of Public Instruction, withhold in whole or part the Provincial grant from such teachers and the county fund apportionment from such sections.

To give bonds.

(2.) To give a bond to Her Majesty in double the sum granted to his inspectoral district for educational purposes for the faithful discharge of the duties of his office.

To keep record of school sections.

(3.) To keep a correct record of the boundaries of each school section in his county, and furnish from time to time amended copies of the same to the several sections.

To inspect schools.

(4.) To visit and inspect half-yearly each school and county academy within his district, and report fully upon its condition to the Superintendent of Education and board of commissioners for the district in which it is situate, in conformity with instructions received from the Superintendent; and in case of failure to visit any school to indicate the fact and the cause in his report to the Superintendent of Education.

To aid teachers with necessary information, &c.

(5.) To furnish trustees and teachers such information as they may require respecting the operation of this Chapter and the performance of their duties, and especially to assist teachers in employing improved methods of imparting instruction, classifying pupils and conducting schools.

(6.) To appoint a convenient place in each district within his county where all school returns shall be lodged, and to give sufficient publicity to any such arrangement.

CHAP. 29.

To appoint place in each district for returns.

(7.) To keep on hand and distribute as directed by the Superintendent all necessary blank forms and returns.

Blank forms.

(8.) To diffuse such information as shall promote the improvement of school houses and grounds and the appurtenances thereto.

School houses and grounds.

(9.) To report annually to the Superintendent all fines received by him under this Chapter.

To report fines.

(10.) To promote the advancement of education by holding public meetings as frequently as possible, and especially to encourage the establishment of schools in sections where none exist.

To hold meetings

(11.) To aid the Superintendent in carrying out a uniform system of education, and generally in giving effect to this Chapter and the regulations of the Council of Public Instruction.

To aid Superintendent.

(12.) To transmit to the Superintendent on or before the first days of December and June in each year a statement of the half-yearly distribution, and also by the first day of December in each year a general report of his labors, noting the condition of the schools in his district and the means of improvement, stating the sections visited where schools did not exist, and the results of such visitations and furnishing therewith such statistical information as the Superintendent may solicit.

To make returns and report

73. The certificate of any inspector shall be received in courts of law as evidence of the boundaries of school sections.

Certificate of Inspector evidence of boundaries.

## TEACHERS.

74. No person shall be deemed qualified to receive under this Chapter any portion of the moneys granted towards the support of county academies or common schools unless holding a license from the Council of Public Instruction. It shall be the duty of every teacher—

To receive portion of grant teacher must be licensed.

Duty of teacher.

(1.) Not to attempt to establish a school in any section without first making an agreement with its trustees.

Teacher to make agreement with trustees.

(2.) To teach diligently and faithfully all the branches required to be taught in the school and to maintain proper order and discipline therein, according to the engagements entered into with the trustees, and the provisions of this Chapter.

To teach efficiently.

(3.) To call the roll morning and afternoon, and otherwise keep an accurate register in the manner prescribed by the Council of Public Instruction, on pain of liability to forfeiture of the public grants; the register to be at all

To call roll and keep register, &amp;c.

CHAP. 29. times open to the inspection of the trustees, visitors, examiners, commissioners, inspectors and Superintendent.

To co-operate with trustees.

(4.) To render when necessary the trustees all possible assistance in classifying the pupils of the section according to their attainments; and when requested by the trustees to institute quarterly examinations for the purpose of transferring any pupils who may be prepared to another department.

To inculcate principles of christian morality.

(5.) To inculcate by precept and example a respect for religion and the principles of christian morality, and the highest regard to truth, justice, love of country, loyalty, humanity, benevolence, sobriety, industry, frugality, chastity, temperance, and all other virtues.

To have special regard to health and comfort of pupils.

(6.) To give assiduous attention to the cleanliness, health and comfort of the pupils; and to report to the trustees the appearance of any infectious or contagious disease in the school.

To have special care of books, &c.

(7.) To have a special care as to the use of school books and apparatus, the neatness and order of the desks, and the cleanliness and ventilation of the school room.

To reimburse trustees for destruction of school property.

(8.) To reimburse the trustees for any destruction of school property by the pupils which is clearly chargeable to gross neglect or failure to enforce proper discipline on the part of the teacher.

To hold public examinations.

(9.) To have during or at the end of each half year a public examination of the school, of which notice shall be given to the parents and trustees and to school visitors resident in the section.

To give notice of meetings.

(10.) To give notice through the pupils of school meetings advertised by the inspector or trustees.

To furnish general school information.

(11.) To furnish the trustees, examiners, commissioners, inspector and Superintendent any information that may be in his power respecting anything connected with the school, or affecting its interest or character.

To certify correctness of returns.

(12.) To certify the correctness of the half-yearly return under oath, as in the subjoined schedule. Any teacher signing a false certificate shall have his or her license cancelled or suspended as the Council of Public Instruction may decide.

#### SCHEDULE.

I, ———, a duly licensed teacher of Grade —, of the Province of Nova Scotia, do swear that I have taught and conducted the school in — School Section, No. —, in accordance with law, for the period —, authorized teaching days during the term ended 30th —, 18—, that the prescribed register has been faithfully and correctly

kept by me, and that to the best of my knowledge and belief the grand total days' attendance made by the enrolled pupils in the said term was —, that my agreement with the trustees is in accordance with the law and regulations, and that there is no collusive understanding by which any portion of the agreement is to be made of no effect.

Sworn at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—, before me. \_\_\_\_\_, J. P. \_\_\_\_\_, Teacher.

## ATTENDANCE.

75. It shall be the duty of the chairman of each annual school meeting held under the provisions of this Chapter to call upon the qualified voters present at such meeting to vote yea or nay on the resolution embraced in schedule A.

Vote on resolution, how taken.

76. Whenever two-thirds of the qualified voters present shall have voted in favor of the resolution embraced in schedule aforesaid, it shall be the duty of the trustees of schools to ascertain through their Secretary or other person or persons appointed for that purpose before the first day of November following the school meeting the names and ages of all children residing in the section between the ages of seven and twelve years inclusive, and the names of their parents or guardians, and to preserve carefully prepared lists of the same.

Trustees' duty if resolution affirmed.

77. To ascertain as soon as possible after the first of June next ensuing how many of the children embraced in the foregoing list have not been at school for eighty full days during the then current "school year," and to notify the parents or guardians of such children of the exact number of days' attendance made by their children from the first of November until the first of June.

Parents or guardians to be notified.

78. To ascertain as soon as possible after the close of the school year how many of the children of the section have not been at school during the school year for the period of eighty full days, and to impose upon the parents or guardians of such children a fine of two dollars for each child who has attended school no portion of the year, and *pro rata* in the case of each child who has attended school but has not reached the period of eighty full days.

Fine for non-attendance of children.

79. Such fines shall be collected in connection with the sectional school rates of the following year, and as a part thereof.

Fines, how collected.

CHAP. 29. 80. The rate-payers present at the annual school meeting are empowered to make provision to compensate the trustees for the discharge of the duties imposed by this Chapter.

Exemptions from fines in certain cases. 81. In imposing fines for failure to attend the required minimum period of eighty full days, trustees shall exempt such parents or guardians as can show that their children are being properly educated otherwise than in the public schools, or whose children are by reason of delicate health, or being distant over two miles from a school, or other sufficient causes, prevented from attendance.

Appeal from imposition of fine. 82. Parents or guardians fined under the provisions of this Chapter can appeal within ten days from the imposing of said fine to any police magistrate or stipendiary magistrate residing in the section, or in the absence of such officer to any acting justice of the peace, who may remit or modify the fine after hearing evidence in such case.

Resolution to be submitted to City Council. 83. It shall be the duty of the Mayor of the City of Halifax to submit annually on or before the first day of October to the City Council the resolution embraced in schedule A, with the substitution of the words "the City of Halifax" for the words "this section," as found in said schedule.

Duty of Halifax School Commissioners. 84. Whenever the resolution aforesaid shall have received the assent of a majority of the members of the City Council voting thereon, the Commissioners of Schools on receiving due notice of such action of the City Council shall and are hereby required to perform in respect to the City of Halifax all the duties assigned by sections 76, 77, 78, 79, 80 and 81 of this Chapter to trustees of schools in regard to their respective school sections, and to report to the City Council as soon after the first of November as possible all fines imposed by them under provisions of section 78.

Duty of warden of incorporated town. 85. It shall be the duty of the warden or presiding officer of each town in the Province having special municipal incorporation to submit annually on or before the first day of October to the town council the resolution embraced in schedule A, with the substitution of the word "town" for "section" as found in said schedule.

Duty of town councils. 86. Whenever the resolution aforesaid shall have received the assent of a majority of the members of the town council voting thereon, the town council shall and are hereby required to perform in respect to the municipality the duties assigned by sections 76, 77, 78, 79, 80 and 81 to trustees of schools in regard to their respective sections.

87. Sections 78 and 81 of this Chapter shall be taken CHAP. 29.  
 as applicable to the City of Halifax and incorporated towns Application of  
 as well as to ordinary school sections. sections 78 and 81

## SCHEDULE A.

*Resolved*, that the provisions of sections 75 to 87 inclusive, of Chapter 29 of the Revised Statutes, shall be made operative in this section.

## SCHEDULE B.

To any of the Constables of said County :

We command you to summon A. B., of \_\_\_\_\_ County, to appear before us at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ o'clock in \_\_\_\_\_noon, to answer to the charge of having failed to cause B. C. to attend school as provided by chapter \_\_\_\_\_ of the Revised Statutes, "Of Public Instruction." Hereof fail not, and make due return hereof within ten days from the date hereof.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—

C. D. }  
 E. F. } Trustees.  
 G. H. }

## MISCELLANEOUS.

88. Members of the Legislature, ministers of religion Visitors of  
 and magistrates shall be visitors of schools. schools.

89. The Superintendent, inspectors, teachers of the Exemptions of  
 Normal and Model Schools, and licensed teachers while superintendent,  
 employed as such, shall be exempt from serving in any inspectors and  
 town office or on juries. teachers.

90. The school year shall consist of a winter and a Winter and summer  
 summer term. The winter term shall begin on the first terms.  
 day of November and end on the thirtieth day of April ;  
 and the summer term shall begin on the first day of May  
 and end on the thirty-first day of October.

91. The Governor-in-Council shall have power to Governor-in-  
 appoint a Principal of the Normal and Model Schools, at a Council to ap-  
 salary not exceeding twelve hundred dollars per annum, point principal of  
 who shall appoint such assistants, with the approval of the Normal School,  
 Council of Public Instruction, as may be found necessary. &c.

92. When any section shall have been without a school Inability of sec-  
 for the period of two years, in consequence of the inability tion to provide  
 of its inhabitants to provide a school house, there shall be school houses.

CHAP. 29. refunded to the trustees of said section, on the recommendation of the board of school commissioners the amount of the county municipal school rate assessed during the said two years on the inhabitants of the section. In no case shall the Superintendent of Education issue an order for such re-payment till furnished by the inspector of schools with a certificate that a school house is in actual course of erection.

Penalty for false return and use of condemned buildings.

93. Both county fund apportionment made to trustees and Provincial grants to teachers shall be withheld from sections making a false return, and from sections whose school or any of whose schools have been conducted in buildings condemned by the board of school commissioners.

. INTERPRETATION.

Interpretation of terms.

94. The following terms used in this Chapter shall mean as hereby defined, except where the context shall preclude such definition :

“Sections” : That portion of territory the school or schools of which may be presided over by a board of trustees.

“Border Section” : A section embracing portions of two or more districts.

“District” : That portion of territory the schools of which may be under the general supervision of a board of commissioners.

“Rate-payer” : Any resident of a section rated in the county rate-roll in respect of real or personal property.

CITY OF HALIFAX.

Constitution and authority of Halifax school board

95. The City of Halifax shall be one school section, and there shall be twelve commissioners of schools for such city, appointed, six by the Governor-in-Council and six by the City Council, as hereinafter provided ; and the twelve commissioners thus appointed shall constitute a board of school commissioners for the City of Halifax, and such board shall be a body corporate, and may exercise all the powers and perform all the duties of public schools in and for the city.

Duration of office of commissioners appointed by the Governor-in-Council.

96. The six commissioners appointed by the Governor-in-Council shall hold office during the period of three years, the two senior commissioners retiring on the first day of November of each and every year, and the Governor-in-Council shall appoint two persons to fill the places of

the two retiring commissioners, who shall hold office for CHAP. 29.  
three years.

97. The commissioners appointed by the City Council shall likewise hold office during the period of three years, the two senior commissioners retiring on the first day of November in each and every year, and the City Council on the first day of November of each year or as soon thereafter as conveniently may be, shall appoint two persons to hold office for three years, to fill the places of the two retiring commissioners.

Duration of office of commissioners appointed by the City Council.

98. No such commissioner, whether appointed by the Governor-in-Council or the City Council, shall be eligible for re-appointment to the board until the expiration of twelve months from the time of his going out of office.

Eligibility for re-appointment.

99. Any extraordinary vacancy in the board caused by death, resignation, removal from the city, refusal or inability to act or other cause, shall be filled by a person appointed by the body or authority who shall have appointed the person causing the vacancy, to hold office for the unexpired term of the person so causing such vacancy.

Extraordinary vacancy, how filled up.

100. If from any cause all or any of the persons to be appointed either by the Governor-in-Council or by the City Council under the provisions of this Chapter shall not have been appointed at the time fixed for such appointment or having been appointed shall not act, it shall be lawful for the commissioners who may have been appointed and consented to act to act until the vacancies so existing shall be filled up.

When remaining commissioners shall have power to act.

101. At the first meeting of the board in November in each year they shall elect a chairman and vice-chairman, who shall, if they continue to be members of such board, remain in office until their successors are appointed.

Election of chairman and vice-chairman.

102. Notice of the first appointment of the commissioners and of all subsequent appointments shall be published in the *Royal Gazette* as soon as conveniently may be after such appointments.

Notice of appointment to be published in the Royal Gazette.

103. The board of commissioners shall take all necessary steps to provide sufficient school accommodation, and shall furnish annually to the Superintendent of Education a report of their proceedings under this Chapter, also returns of all schools subject to their control, and a statement of the appropriation of all moneys received and expended by them under the provisions of this Chapter.

Duties of board of commissioners.

104. The board of commissioners are authorized to co-operate with the governing body of any city school on such terms as to the board shall seem right and proper, so that the benefits of such school may be as general as circumstances will permit; and the board may make such

Board of commissioners may aid any city school provided it be a free school.



CHAP. 29. allowance to any such school out of the funds under their control as shall be deemed just and equitable; but no public funds shall be granted by them in support of any school unless the same be a free school.

City Council shall assess sum required by commissioners for school purposes.

Mode of assessment.

Not to exceed \$60,000.

Objects provided for out of assessment.

Board may borrow money for sites and buildings.

105. On request of the board of commissioners specifying the amount required in addition to the sums provided from the Provincial Treasury for the yearly support and maintenance of the schools under their charge, the City Council shall be authorized and are hereby required to add a sum sufficient, after deducting costs of collection and probable loss, to yield the amount so specified by the board, to the general assessment of the city, to be levied and collected from the inhabitants thereof and from property lying within the county the owners whereof reside in the city; and on the payment of the required fee the city assessors shall furnish to the trustees of Dartmouth or other school section, and the clerk of the peace for the county shall furnish to the city assessors, the information necessary in order to give effect to this provision. Any person who may have been assessed both in the city and in Dartmouth, or any of the school sections in the county in respect of such property, shall be entitled to receive back the amount paid by him either in the city or in Dartmouth or other schools sections as the case may be in accordance with the foregoing construction of the law. The sum so assessed shall be paid quarterly by the city treasurer to the board, upon the written order of the chairman or vice-chairman. Provided however, that the commissioners shall not have power to assess the city for any greater sum than sixty thousand dollars in any one year without the consent of the Governor-in-Council given at the request of such commissioners.

106. The objects to be provided for by the board of commissioners out of the sum so assessed shall be the salaries of teachers and assistants, and of the secretary of the board, the leasing of lands and buildings for school purposes, the repairing and improving of grounds and buildings, the cleaning, fuel, and insurance of school houses, the purchase of prescribed school books, the interest payable on debentures issued by the board, and all other expenses required in the due execution of the different powers and trusts vested in the board by this Chapter.

107. The board of commissioners shall have power to select and purchase sites for school buildings, and shall have power to borrow money for the purchase of the same; as also for the purchase or erection of school buildings, the improvement of school grounds, and the purchase of suitable furniture and apparatus for the schools

under their control; but the commissioners shall not enter CHAP. 29.  
 into any contract for the purchase of any land nor for the Proviso.  
 erection of any school building until such contract has  
 been submitted to and obtained the approval of the  
 Governor-in-Council.

108. To enable the commissioners to borrow money, Board may issue debentures.  
 they may issue debentures in such form and for such sums  
 as they may decide upon, payable with interest in twenty-  
 five years from the date thereof, free from taxation; such  
 debentures to be a charge on the City of Halifax, and the  
 interest thereon to be paid every six months, and to be  
 included in the sum specified and required to be assessed  
 upon the inhabitants of the city as aforesaid. The  
 debentures shall be sealed with the corporate seal of the  
 board, and shall be signed by the chairman and counter-  
 signed by the secretary.

109. The board of commissioners are hereby invested Title to public school property (except Halifax grammar school) vested in board of commissioners  
 with the title of all public school property, real and  
 personal, within the city (with the exception of the Halifax  
 Grammar School), and may sell and dispose of the same  
 or any part thereof, and with the proceeds may purchase  
 new school house sites and erect new school houses in such  
 places and at such times as they may deem expedient.

110. The commissioner whose name shall stand first on Chairman of board.  
 the list of appointments shall be chairman of the board;  
 and in his absence the commissioner next on the list  
 present shall act as chairman, and the commissioners shall  
 appoint their own secretary and fix his salary.

111. Every male person of full age having been resident Every male resident of full age to pay one dollar for the support of public schools.  
 in the city six months or upwards immediately previous to  
 the levying of the assessment in any year, not being  
 assessed to the amount of one dollar for the support of  
 public schools in respect of real or personal property, shall  
 be assessed in the sum of one dollar for the support of  
 such schools during the year; but the City Council shall  
 have power to exempt from the payment of such assessment  
 any person whom they may deem unable to pay the same.

112. The Superintendent of Education shall be empow- Superintendent to pay commissioners grants to teachers.  
 ered to pay to the board of commissioners the grants  
 provided by law for teachers and assistants employed in  
 the city.

113. The board of commissioners for the city shall be Commissioners may dispose of debentures.  
 empowered to dispose of debentures, authorized under this  
 Chapter at current rates.

114. The board of commissioners for the city shall be Commissioners to receive one thousand dollars.  
 entitled to receive a sum in no case to exceed a thousand

CHAP. 30. dollars annually as remuneration for their services; such remuneration to be apportioned according to the promptness and regularity of the attendance of the members of the board, and the amount of labor performed by each, as the board may decide.

City Treasurer to pay over money to board.

115. All moneys assessed on the City of Halifax for educational purposes, and in the hands of the city treasurer, shall be paid over by him to the commissioners of schools for the City of Halifax, at the times and in the manner hereinbefore provided.

Commissioners may insure school houses.

116. The commissioners of schools for the City of Halifax are authorized to effect insurances on school houses.

How far provisions of chapter apply to Halifax.

117. The provisions of this chapter, except as herein otherwise specified, shall apply to the City of Halifax; provided that the pupils of any ward shall be entitled to school privileges in any other ward.

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## CHAPTER 30.

### OF THE UNIVERSITY OF HALIFAX.

The University of Halifax shall continue to be a body politic and corporate.

1. The University of Halifax, a body politic and corporate under and by virtue of Chapter 28 of the Acts of 1876, shall continue to be a body politic and corporate under the said name as constituted by the said Chapter and any Act in amendment thereof and any minute of council or order of the Governor-in-Council made in pursuance of the said Act.

Corporation may hold property.

2. The corporation may purchase, take and hold real and personal estate not exceeding the annual value of thirty thousand dollars; such annual value to be calculated and ascertained at the period of taking, purchasing or acquiring the same; and may grant, sell, lease, mortgage or otherwise dispose of the same as may be deemed expedient for the interests of the University.

Corporation to consist of chancellor, vice-chancellor, fellows and graduates.

3. The corporation shall consist of a chancellor, vice-chancellor, fellows and graduates; and there shall be twenty-four fellows, exclusive of the chancellor and vice-chancellor for the time being. The fellows shall be such persons as the Governor-in-Council shall from time to time appoint as fellows, and as shall be appointed as fellows by the members of the Senate under the power hereinafter contained; and the graduates shall be the persons on whom

respectively any of the institutions mentioned in the first section of Chapter 28 of the Acts of 1876 conferred any degrees, and the persons on whom respectively the University hereby created shall hereafter confer degrees. CHAP. 30.

4. The chancellor, vice-chancellor and fellows for time being shall constitute the Senate of the University.

5. Whenever a vacancy shall occur in the office of chancellor of such university either by death, resignation or otherwise, the Governor-in-Council shall nominate and appoint a fit and proper person to be chancellor instead of the chancellor occasioning such vacancy; and in the meantime the duties of the chancellor shall be performed by the vice-chancellor, or fellow performing the duties of vice-chancellor under the provision hereinafter contained; and the vice-chancellor or fellow so performing the duties of vice-chancellor and fellows shall have all such powers as are hereby given to the chancellor, vice-chancellor and fellows, or to the Senate. Appointment of  
chancellor.

6. The office of vice-chancellor of the university shall be an annual office; and the members of the Senate shall, at a sitting to be held by them for that purpose on some day within a month before the expiration of the tenure of such office, of which due notice shall be given, elect some one of the fellows of the university to be the vice-chancellor, and so from time to time annually; or in case of the death, resignation or other avoidance of any such vice-chancellor before the expiration of his year of office shall at a meeting to be held by them for that purpose, as soon as conveniently may be, of which due notice shall be given, elect one other of the said fellows to be vice-chancellor for the remainder of the year in which such death, resignation or other avoidance shall happen; and until such election the duties of vice-chancellor shall be performed by the senior fellow for the time being. The seniority of the fellows first appointed shall be determined by the order in which their names shall appear in the instrument of appointment or in the announcement of their appointment in the *Royal Gazette*, and the seniority of fellows afterwards appointed or elected at the same time, by the order in which their names shall appear in the instrument of appointment or the instrument or certificate of election. In the event of a vacancy existing in the office of vice-chancellor for more than one year owing to failure of the members of the Senate to elect a vice-chancellor as hereinbefore provided, any five fellows of the university may by writing under their hand, published in the *Royal Gazette* for at least one month, convene a meeting of the Senate at a time and place to Vice-chancellor,  
&c.

CHAP. 30. be named in the said writing or notice, and the members of Senate present at said meeting may proceed to elect a vice-chancellor who shall hold office for one calendar year next after such election.

Fellows.

7. If at any time by death, resignation or otherwise, a vacancy shall be created in the body of the fellows, then, and so often as the same shall occur, new fellows shall be appointed in manner herein provided, so that the number of twenty-four fellows may be kept complete, exclusive of the chancellor and vice-chancellor for the time being.

Appointment of fellows.

8. To all vacancies which shall from time to time occur while the number of fellows shall amount to or exceed seventeen, exclusively of the chancellor and vice-chancellor for the time being, the Governor-in-Council shall from time to time appoint a new fellow or new fellows.

Ditto.

9. Until the number of fellows of the University who shall have been selected from a list of persons to be nominated by convocation under the power hereinafter contained shall amount to or exceed six, every second fellow, or one out of every two fellows who shall be thereafter appointed by the Governor-in-Council, shall be chosen from a list of three persons to be nominated by convocation under the power hereinafter contained; and when and so soon as there shall be six fellows for the time being who shall have been so selected, thenceforth every fourth fellow, or one out of every four fellows who shall be thereafter appointed by the Governor-in-Council shall be chosen out of a list of three persons to be nominated by convocation, as aforesaid.

Election of fellows.

10. If at any time by death, resignation or otherwise the number of the fellows of the university shall be reduced below the number of seventeen, exclusive of the chancellor and vice-chancellor for the time being, then in such case, and so often as the same shall happen, the members of the Senate shall, as soon as conveniently may be, at a meeting to be held for that purpose, of which due notice shall be given, elect eight or more fit and proper persons to be fellows in addition to the then remaining fellows; to the end that by means of such election the number of twenty-four fellows of such university may be completed, exclusive of the chancellor and vice-chancellor of the university; but at least one-fourth of the whole number of fellows who shall be so elected by the Senate shall be chosen from a list of persons to be nominated by convocation, such list to contain three times the number of persons to be selected therefrom. Until the number of members of convocation shall exceed twenty, the power of nominating persons for

fellowship herein conferred on convocation shall be CHAP. 30.  
exercised by the Senate of the University.

11. The following graduates of the University for the Convocation.  
time being shall constitute the convocation of the university  
(that is to say), all doctors of law, doctors of medicine,  
doctors of science and masters of arts, all bachelors of law  
and bachelors of medicine of two years' standing, and all  
bachelors of arts and bachelors of science of three years'  
standing, and also all graduates holding such other degrees  
to be hereafter conferred by the university, as shall be  
recognized as qualification for admission to convocation by  
resolution of convocation in manner hereinafter provided;  
and the standing of all the graduates on whom degrees  
were conferred by the various universities and colleges  
now existing and in the third section, particularly men-  
tioned, shall be computed from the respective times when  
such degrees were actually conferred, precisely as if the  
university hereby created had been then in existence, and  
had conferred the same degrees, except that no graduate  
of any of such universities or colleges shall be admitted  
as a member of convocation who shall not cause his name  
and such further particulars as may be required to  
be entered on the register of convocation hereinafter  
mentioned.

12. A register of the graduates constituting for the Register, &c.  
time being the convocation of the University of Halifax  
shall be kept by such officer and in such manner as the  
Senate of such University shall from time to time appoint  
and direct, which register shall be conclusive evidence that  
any person whose name shall appear thereon at the time  
of his claiming to vote in convocation is so entitled to  
vote, and that any person whose name shall not appear  
thereon at the time of his claiming to vote in convocation  
is not so entitled to vote. Such graduates present and  
future shall pay such reasonable annual fees in that behalf,  
and at such times and with such liberty to compound for  
the same as the Senate with the concurrence of convocation  
and with the approbation of the Provincial Secretary shall  
from time to time direct, and such Senate may make such  
by-laws and regulations as may be deemed expedient for  
taking off the name of any such graduate as aforesaid for  
non-payment of such fees and for reinstating such name  
on such terms as they shall by such by-laws prescribe in  
that behalf.

13. The Lieutenant-Governor of Nova Scotia for the Visitor.  
time being shall be the visitor of the University, with  
authority to do all those things which pertain to visitors  
as often as to such Lieutenant-Governor shall seem meet.

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Powers and duties of senate.

14. The Senate for the time being shall have the entire management and superintendence over the affairs, concerns and property of the University of Halifax; and in all cases unprovided for by this Chapter it shall be lawful for the Senate to act in such manner as shall appear to them best calculated to promote the purposes intended to be promoted by the University. And such Senate shall have full power from time to time to make and alter any by-laws and regulations (so as the same be not repugnant to the laws of the Province or to the general objects and provisions of this Chapter) touching the examination for degrees and the granting of the same, and touching the mode and time of convening the meetings of the Senate and the meetings of convocation, and in general touching all other matters whatsoever regarding the University not otherwise expressly provided for by this Chapter. And all such by-laws and regulations when reduced into writing and after the common seal of the University shall have been affixed thereto, shall be binding upon all persons members thereof, and all candidates for degrees to be conferred by the same; all such by-laws and regulations having been first submitted to and approved by the Governor-in-Council. Provided always that it shall not be lawful for such Senate to impose on any person any compulsory religious examination or test; nor to do or cause or suffer to be done anything that would render it necessary or advisable with a view to academical success or distinction that any person should pursue the study of any materialistic or sceptical system of logic or mental or moral philosophy.

Majority of senate to decide.

15. All questions which shall come before the Senate shall be decided by the majority of the members present; and the chairman at any such meeting shall have a vote, and in case of an equality of votes a second or casting vote. No question shall be decided at any meeting unless the chancellor or vice-chancellor and five fellows, or in the absence of the chancellor and vice-chancellor unless six fellows at the least, shall be present at the time of such decision. At every meeting of the Senate the chancellor, or in his absence the vice-chancellor, shall preside as chairman; or in the absence of both, a chairman shall be chosen by the members present, or the major part of them.

Quorum.

Senate to appoint examiners.

16. The Senate for the time being of the University shall have full power from time to time to appoint, and as they shall see occasion to remove all examiners, officers and servants of such University.

Powers of convocation.

17. The convocation of the University shall have the powers following (that is to say),—The power of nominating

three persons for every fellow to be appointed in the CHAP. 30.  
 manner hereinbefore mentioned from a list nominated by  
 the convocation as provided by this Chapter; with power  
 to the convocation if it shall think fit to enable absent  
 members of the convocation to vote on such nominations  
 of lists by voting-papers in such form or to such effect,  
 and to be signed, transmitted, verified and recorded in  
 such manner and subject to such regulations and provisions  
 as the convocation may from time to time determine, but  
 not so to vote on any other matter:—The power of  
 discussing any matter whatsoever relating to the University,  
 and of declaring the opinion of convocation in any such  
 matter. The power of deciding as to the recognition upon  
 such terms as the Senate shall propose of any degree to be  
 hereafter conferred under this Chapter, other than degrees  
 in arts, laws, science and medicine, as a qualification for  
 admission to convocation. The power of deciding on the  
 mode of conducting and registering the proceedings of  
 convocation. The power of appointing and removing a  
 clerk of convocation and of prescribing his duties. Except  
 as expressly hereby provided, the convocation shall not be  
 entitled to interfere in or have any control over the  
 affairs of the University.

18. Once at least in every year, and as often as they may  
 think fit, the Senate shall convene a meeting of convocation. Meetings of con-  
 vocation.

19. If fifteen or more members of convocation shall  
 by writing under their hands require the chairman for  
 the time being of convocation to be appointed as hereinafter  
 prescribed to convene an extraordinary meeting of convo- Extraordinary  
 meetings of con-  
 vocation.  
 cation, and such requisition shall express the object of the  
 meeting required to be called, it shall be lawful for the  
 chairman to convene a meeting of convocation; provided Proviso.  
 always that after the first of such extraordinary meetings  
 no such extraordinary meeting shall be so convened until  
 the expiration of three calendar months from the last of  
 such extraordinary meetings; and provided also that no  
 matter shall be discussed at any such extraordinary  
 meeting, except the matter for the discussion whereof it  
 was convened.

20. The Senate shall provide a proper place for the  
 meetings of convocation; and the proceedings of any Senate to provide  
 place for meet-  
 ings of convoca-  
 tion.  
 meeting of convocation shall be transmitted to the Senate  
 at the next following meeting of the Senate.

21. Notice of the meetings of convocation shall be Notice of such  
 meetings, &c.  
 given by advertisement, or in such other manner as the  
 Senate shall from time to time determine. Whenever the  
 Provincial Secretary for the time being of this Province  
 shall notify to the Senate that the Governor-in-Council is



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desirous of appointing a fellow or a number of fellows and of having submitted to such Governor-in-Council a list of persons from which to select such fellow or fellows, then the Senate shall, as soon thereafter as conveniently may be, convene a meeting of convocation; and such meeting shall nominate three persons not being fellows if one fellow is to be appointed, or three times as many persons not being fellows as there shall be fellows to be so appointed if there shall be more than one fellow to be appointed.

Chairman of convocation to be chosen by members.

22. A person shall be appointed by the Senate to preside at the meeting of convocation; and at such meeting a standing chairman of convocation shall be chosen by the members present, or the major part of them.

To hold office for three years, &c.

23. The office of chairman of convocation shall be an office held for the term of three years, unless sooner determined by death, resignation or otherwise; but the chairman shall be eligible for re-election. Within the year preceding the expiration of every term of such officer, or in case of the death or resignation of the chairman or any vacancy of such office, the members of convocation present at any meeting duly convened or the major part of them shall elect a chairman, who if elected during the term of office of any chairman, shall hold office three years after the expiration of the tenure of office of such chairman, and if elected during a vacancy then till the expiration of the third year after the commencement of such vacancy. If from any cause no chairman is elected to succeed any chairman for the time being, then such last mentioned chairman shall continue in office until his successor is appointed.

Chairman *pro tem.*

24. If the chairman shall be absent at the time of the meeting of convocation, or if there shall be a vacancy in the office, then before proceeding to business the members of convocation then present or the major part of them shall elect a chairman, who shall hold office during such meeting only.

Majority of convocation to decide

25. All questions which shall come before convocation shall, subject to the provisions hereinbefore contained with respect to nominations of lists of fellows, be decided by the majority of the members present exclusive of the chairman; but the chairman at any meeting thereof shall in case of an equality of votes have a casting vote.

Quorum of convocation.

26. No question shall be decided at any meeting of convocation unless twenty members at least shall be present.

Adjournment.

27. Any meeting of convocation shall have power to adjourn to a future day.

Examinations for degrees.

28. Once at least in every year the Senate of the University shall cause to be held an examination of candi-

dates for degrees; and on every such examination the candidates shall be examined by examiners appointed for the purpose by the Senate, and on every such examination the candidates shall be examined in as many branches of general knowledge as such Senate shall consider the most fitting subjects of such examination. CHAP. 30.

29. Persons shall be admitted as candidates for the respective degrees of bachelor of arts, master of arts, bachelor of laws and doctor of laws, bachelor of science and doctor of science, and any other degrees which the Senate of the University may hereafter from time to time determine to confer in pursuance of the power hereinafter contained other than degrees in medicine and surgery, on satisfying such Senate that they respectively have completed in any of the institutions hereinafter mentioned whilst in connection with the University hereby created, or any other institution for the time being in connexion with such University as hereinafter provided for, the course of instruction which such Senate shall from time to time by regulations in that behalf determine. Degrees.

30. The following institutions shall be in connection with the University of Halifax for the purpose set forth in the last preceding section, that is to say: King's College at Windsor; Dalhousie College and Saint Mary's College in the City of Halifax; Acadia College at Wolfville; The College of St. Francis Xavier at Antigonishe; and Mount Allison Wesleyan College at Sackville, New Brunswick; and it shall be lawful for the Senate, with the consent of the Governor-in-Council, from time to time to alter and amend the list of institutions in connection with such University by adding any other institutions thereunto. Institutions in connection with University.

31. Persons not educated in any of such institutions for the time being connected with such University shall be admitted as candidates for matriculation, and for any of the degrees hereby authorized to be conferred by such University of Halifax other than degrees in medicine or surgery, on such conditions as the Senate by regulations in that behalf shall from time to time determine. Candidates for matriculation.

32. For the purposes of granting the degrees of bachelor of medicine, doctor of medicine and master in surgery, and for the improvement of medical education in all its branches, as well in medicine as in surgery, midwifery and pharmacy, it shall be the duty of the Senate from time to time to report to the Governor-in-Council what appear to them to be the medical institutions and schools in the Dominion of Canada or elsewhere from which it may be fit and expedient in the judgment of such Senate to admit candidates for medical degrees, such Candidates for degrees in medicine and surgery.

CHAP. 30. report to be approved by the Governor-in-Council ; and no persons shall be admitted as candidates for the respective degrees of bachelor of medicine, doctor of medicine or master in surgery, to be conferred by the University of Halifax, unless they shall satisfy such Senate that such persons have in any one or more of such institutions or schools completed the course of instruction which such Senate by regulation in that behalf shall determine ; and no person shall be admitted as a candidate for the degree of master in surgery unless he shall be previously a bachelor of medicine of such University ; and it shall be lawful for such Senate from time to time, with the approval of the Governor-in-Council, to vary, alter and amend any such report, by striking out any of such institutions or schools included therein or by adding others thereunto.

Senate may examine for and confer degrees.

33. The Senate of the University shall have power to examine for, and after examination to confer in such mode and on compliance by the candidates with such conditions as they shall from time to time determine, the several or such as they shall think fit of the degrees of bachelor and master of arts, bachelor and doctor in laws, science and medicine, and master in surgery ; and also to confer the several degrees of bachelor, master and doctor in any departments of knowledge whatever, except theology, as such Senate by regulation in that behalf shall from time to time determine, and whether such departments of knowledge shall or shall not include any portion of the departments of knowledge for which degrees in arts, law, science and medicine, or any of them, are authorized to be conferred by this Chapter ; and such reasonable fees may be charged for or in any respect of such examination and degrees respectively or either of them as such Senate, with the approbation of the Governor-in-Council, shall from time to time direct.

Certificate of degrees, &c.

34. At the conclusion of every examination of the candidates the examiners shall declare the name of every candidate whom they shall have deemed to be qualified to receive any of such degrees, together with such particulars as such Senate shall from time to time determine ; and every such candidate shall, if otherwise approved by such Senate, and if they shall think fit, receive from the chancellor a certificate under the seal of the University of Halifax, and signed by such chancellor, or in his absence or incapacity by the vice-chancellor, in which the degree allowed by such Senate to be taken by him shall be stated, together with such other particulars if any as such Senate shall deem fitting to be stated therein.

35. The Senate of the University shall also have power CHAP. 30. to confer any of such degrees as *ad eundem* degrees; Ad eundem de-  
grees. but no degree so conferred shall, without the consent of convocation in each case, entitle the holder thereof to be or become a member of convocation.

36. Such Senate shall have power to examine for and Certificates of  
proficiency. after examination to grant, in such mode and on compliance by the candidate with such conditions as they shall from time to time determine, certificates of proficiency in such branches of knowledge as such Senate shall from time to time by regulations made in that behalf determine; and in addition to the examination of candidates for degrees in this Chapter mentioned and ordained, such Senate may cause to be held from time to time examinations of persons who shall have prosecuted the study of such branches of knowledge and who shall be candidates for such certificates of proficiency as aforesaid, subject to such regulations as by the Senate shall from time to time be made in that behalf; and on every such examination the candidates shall be examined by examiners appointed by such Senate; and at the conclusion of every examination of the candidates the examiners shall declare the name of every candidate whom they shall have deemed to be qualified to receive any such certificate, together with such particulars as the Senate shall from time to time determine; and he shall, if otherwise approved by such Senate, and if they shall think fit, receive from the Chancellor a certificate under the seal of the University of Halifax and signed by such Chancellor, or in his absence or incapacity by the vice-chancellor, in which the branch or branches of knowledge in respect of which he has been allowed by such Senate to obtain the certificate shall be stated, together with such other particulars if any as the Senate shall deem fitting to be stated therein. And such reasonable fees may be charged for or in respect of such examinations and certificates of proficiency respectively or either of them, as such Senate with the approbation of the Governor-in-Council shall from time to time direct.

37. All fees shall be carried to one general fee fund Fees, accounts, &c for the payment of the expenses of the University of Halifax, under the directions and regulations of the Governor-in-Council, to whom the accounts of income and expenditure of the University shall once in every year be submitted; which accounts shall be subject to such examination and audit as the Governor-in-Council may direct.

38. All by-laws and regulations made by the Senate By-laws and re-  
gulations. from time to time in relation to any of the matters

**CHAP. 31.** hereinbefore mentioned shall be submitted to and approved by the Governor-in-Council as hereinbefore provided.

**Construction of this Chapter.** 39. This Chapter shall be construed and adjudged in the most favorable and beneficial sense for the University, as well in the provincial courts of law and equity as elsewhere.

**Report by senate** 40. The Senate shall annually report to the Governor-in-Council at such time as he shall appoint upon the transactions of the University during the year preceding such report, and upon the general state and prospects of the same, and such other particulars as such Senate shall deem proper, or as the Governor-in-Council shall require; the Senate shall also whenever required so to do by the Governor-in-Council report specially upon any matters or subjects connected with the University; and every such annual or special report shall be laid before the Legislature of Nova Scotia at its then or next ensuing session.

## CHAPTER 31.

### OF THE EDUCATION OF DEAF OR DEAF MUTE PERSONS.

**Provisions for admission into Halifax Institution for the deaf and dumb.** 1. The parent or guardian of any deaf or deaf mute person of sound mind, between the ages of eight and eighteen years, who has under the provisions of Chapter 35 of the Revised Statutes of Nova Scotia, "of the Settlement and Support of the Poor," a settlement within any county or district of the Province incorporated by the Chapter entitled, "of County Incorporation," of the Revised Statutes of Nova Scotia, may apply to the warden of the municipality for an order for the admission of such person into the Halifax Institution for the Deaf and Dumb; which order the said warden shall at once grant, under his hand and the corporate seal of the municipality, on being satisfied that such deaf or deaf mute person is between the ages above prescribed and of sound mind and has a legal settlement in the municipality.

**Admission to be subject to regulations of institution.** 2. Such order shall entitle the deaf or deaf mute person named therein to be received into the Halifax Institution for the Deaf and Dumb, subject to the rules and regulations of that institution and to conditions hereinafter described, to be educated and boarded therein during the school terms. Pupils under twelve shall be entitled to remain eight years; those entering between the ages of twelve and fifteen shall be entitled to remain six years, and those between fifteen and eighteen four years.

**Terms of admission.**

It being further provided that in the case of hopeless incapacity, serious misconduct or other sufficient cause on the part of any pupil, the allotted term may be shortened at the discretion of the board of directors of said institution.

CHAP. 31.

Proviso.

3. For every deaf or deaf mute person received into the Halifax Institution for the Deaf and Dumb pursuant to this Chapter and educated and boarded therein, the board of directors of the Halifax Institution for the Deaf and Dumb shall be entitled to receive from the Provincial Treasury at the rate of sixty dollars per annum, payable half-yearly, and also to receive at the same rate from the county school fund of the municipality to which the said deaf or deaf mute person belongs. When such municipality shall not comprise an entire county the last-mentioned grant of sixty dollars shall be charged against the county school funds of both districts included within the county in proportion to the amounts of their respective school allowance derived from the county school funds.

Expense of education, how defrayed.

4. It shall be the duty of the directors of the Halifax Institution for the Deaf and Dumb to furnish semi-annually to the Council of Public Instruction full returns of the names, ages, residence, &c., of the pupils in respect of whom the above grants may be claimed.

Directors to furnish semi-annual returns.

5. In the semi-annual apportionment of the county school fund the Superintendent of Education shall include the amounts due the directors of the Halifax Institution for the Deaf and Dumb, and issue drafts therefor on the treasury of the respective municipalities.

Duties of Superintendent of Education.

6. The Provincial Secretary shall be *ex officio* a member of the board of directors of the Halifax Institution for the Deaf and Dumb.

Provincial Secretary member of Board of Directors.

7. In the case of any incorporated city or town within the Province in which any such deaf or deaf mute person as is designated in the first section of this Chapter has a legal settlement, an allowance to the board of directors of the said institution of sixty dollars per annum shall be assessed upon the inhabitants of the said city or town, in case such city or town does not contribute to or draw from the county school fund, and in such case said sum shall be paid to the said directors for each such deaf or deaf mute person sent to the said institution; and each such deaf or deaf mute person shall be admitted to said institution in the manner prescribed in the first section of this Chapter, the chief executive officer of the corporation exercising the powers therein conferred upon the warden of the municipality. And there shall be paid to the said directors from

Assessment of incorporated city or town in certain cases.

Aid from Provincial Treasury

CHAP. 32. the Provincial Treasury for each such deaf or deaf mute person for which such city or town contributes such allowance the sum of sixty dollars in like manner as is provided in the third section of this Chapter.

Cap. 7, Acts 1874  
repealed.

8. Chapter 7 of the Acts of 1874 is hereby repealed.

## CHAPTER 32.

### OF THE EDUCATION OF THE BLIND.

Order for admission into Halifax School for Blind.

1. The parent or guardian of any blind person between the ages of ten and twenty-one years who has, under the provisions of Chapter 35 of the Revised Statutes of Nova Scotia, "of the Settlement and Support of the Poor," a settlement within any county or municipality of the Province incorporated by the Chapter entitled, "of County Incorporation," of the Revised Statutes of Nova Scotia, may apply to the warden of such municipality for an order for the admission of such person into the Halifax School for the Blind, which order the said warden shall at once grant under his hand and the corporate seal of the municipality on being satisfied that such blind person is between the ages above prescribed and has a legal settlement in the municipality.

Effect of order of admission.

2 Such order shall entitle the blind person named therein to be received into the Halifax School for the Blind, and, subject to conditions hereinafter described, to be educated and boarded therein during the school terms. Pupils under thirteen years of age when entering the school shall be entitled to remain seven years; those entering between the ages of thirteen and seventeen shall be entitled to remain five years; and those between the ages of seventeen and twenty-one years to remain three years.

Expense of education, how defrayed.

3. For every blind person received into the Halifax School for the Blind pursuant to this Chapter and educated and boarded therein, the board of managers of the Halifax School for the Blind shall be entitled to receive from the Provincial Treasury at the rate of sixty dollars per annum, payable half-yearly, and also to receive at the same rate from the county school fund of the municipality to which the said blind person belongs. When such municipality shall not comprise an entire county the last-mentioned grant of sixty dollars shall be charged against the county school funds of both districts included within the county in proportion to the

amounts of their respective school allowance derived from CHAP. 32.  
the county school fund.

4. It shall be the duty of the managers of the Halifax School for the Blind to furnish semi-annually to the Council of Public Instruction full returns of the names, ages, residence, &c., of the pupils in respect of whom the above grants may be claimed.

Managers of school to furnish returns.

5. In the semi-annual apportionment of the county school fund the Superintendent of Education shall include the amounts due the managers of the Halifax School for the Blind and issue drafts therefor on the treasury of the respective municipalities.

Duties of Superintendent of Education.

6. The Provincial Secretary shall be *ex officio* a member of the board of managers of the Halifax School for the Blind.

Provincial Secretary member of Board of Managers.

7. In the case of any incorporated city or town within the Province in which any such blind person as is designated in the first section of this Chapter has a legal settlement, an allowance to the board of managers of the said school of sixty dollars per annum may be assessed upon the inhabitants of the said city or town in case such city or town does not contribute to or draw from the county school fund, and in such case said sum shall be paid to the said managers for each such blind person sent to the said school, and each such blind person shall be admitted to said school in the manner prescribed in the first section of this Chapter, the chief executive officer of the corporation exercising the powers therein conferred upon the warden of the municipality, and there shall be paid to the said managers from the Provincial Treasury for each such blind person for which such city or town contributes such allowance the sum of sixty dollars in like manner as is provided in the third section of this Chapter.

Assessment of incorporated city or town in certain cases.

8. The Governor-in-Council, upon being satisfied that an applicant has a settlement within the Province and has no means for paying the expense of his or her education, may by order-in-council upon the recommendation of the board of managers, make the provisions of this Chapter apply to any blind person over the age of twenty-one years of age. Such order-in-council shall entitle the blind person to be received in the school on the same terms as persons mentioned in the first and second sections of this Chapter.

Persons over the age of twenty-one to be admitted in certain cases.

9. The Governor-in-Council shall have authority by order-in-council, upon the recommendation of the board of managers, to extend the time of any pupil who has entered under the provisions of this Chapter.

Governor-in-Council may extend time of residence.



CHAP. 33.**TITLE IX.****OF PUBLIC CHARITIES AND THE POOR.****CHAPTER 33.****OF THE COMMISSIONERS OF PUBLIC CHARITIES.**

Governor-in-Council to appoint Board of Commissioners. 1. The Governor-in-Council is hereby authorized to appoint three persons who together with the Commissioner of Public Works and Mines and the Mayor of the City of Halifax shall constitute a board of commissioners to be known and designated "The Commissioners of Public Charities," and the Commissioner of Public Works and Mines shall be chairman of such board.

Commissioners to be body corporate. 2. The Commissioners of Public Charities shall be and are hereby constituted a body corporate, with all the rights, powers and privileges incident to corporations in this Province.

To have management of certain institutions. 3. The financial and general management of the Provincial Hospital for the Insane, the Poor Asylum, and the Provincial and City Hospital, shall be vested in the Commissioners of Public Charities.

Term of office. 4. The three commissioners appointed by the Governor-in-Council shall hold office for three years, and thereafter one of them shall retire annually in the order in which said commissioners shall be named in their original appointment; but the retiring commissioners shall be eligible for re-appointment, and all or any of the commissioners may be removed by the Governor-in-Council at any time for malfeasance; and such commissioners shall be entitled to receive from the Provincial Treasury annually the sum of twelve hundred dollars, which shall be apportioned amongst such three commissioners in accordance with their attendance at the meetings of the board, such attendance to be determined by a register thereof to be signed by each member present at each and every meeting.

Pay of Commissioners. 5. Any three members of the board shall constitute a quorum for the transaction of business, but no vote involving the appropriation of money shall pass in the absence of the chairman.

Vacancy, how filled. 6. When any vacancy shall occur in such board it shall be filled by the Governor-in-Council, except in the

case of the Mayor of the City of Halifax, who shall always CHAP. 33. be *ex officio* a member of the board.

7. The Commissioners of Public Charities shall appoint such officials and employees as may be by them with the approval of the Governor-in-Council considered necessary for the efficient management of the several institutions under their charge whenever four members of the board, including the chairman, shall be present. But ward attendants of the Hospital for the Insane may be appointed on the recommendation of the superintendent.

Appointment of officials.

8. All real and personal property of the several institutions referred to in section 3 in this Chapter shall hereafter be vested in and controlled by the Commissioners of Public Charities. But no property, either real or personal of the several institutions herein referred to, other than such as it has hitherto been the custom for officials to sell, shall be disposed of by sale or otherwise by the commissioners unless with the approval of the Governor-in-Council. Nothing herein contained shall affect in any manner any existing and vested private rights.

Property vested in Commissioners.

9. The Commissioners of Public Charities shall have power to make such by-laws and regulations, subject to the approval of the Governor-in-Council, as they may deem necessary for the proper management of the institutions under their charge.

By-laws, &c.

10. The Commissioners of Public Charities shall also have power to visit, and it shall be their duty to visit at least twice in every year, all the other charitable institutions in the city of Halifax and town of Dartmouth receiving grants of public money from the Provincial Treasury, and to annually report to the Government upon their general management and efficiency.

Commissioners to visit institutions.

11. The assets of the commissioners of the Hospital and Poor Asylum shall vest in the Commissioners of Public Charities, who shall assume all the liabilities and obligations of such commissioners of said Hospital and Poor Asylum.

Certain assets vested in Commissioners.

12. No Commissioner of Public Charities shall become a contractor or security for any contractor for supplies or furnish any supplies to any of the institutions referred to in this Chapter.

No Commissioner to be contractor, &c.

13. No expenditure beyond that requisite for the ordinary maintenance of the institutions herein referred to shall be entered into by the commissioners unless with the approval of the Governor-in-Council.

Expenditure.

14. All accounts of the Commissioners of Public Charities shall be audited at such times and in such manner as the Governor-in-Council shall direct.

Accounts.

## CHAP. 35.

## CHAPTER 34.

## OF PROPERTY GRANTED IN TRUST FOR HOSPITAL FOR INSANE.

Where granted, &c., without appointing trustees to be vested in Commissioners of Public Charities.

1. Where any lands, moneys, securities or other real or personal estate has been or shall be granted, devised, bequeathed or given by any person for the use or benefit of the Nova Scotia Hospital for the Insane, and the person so granting, devising, bequeathing or giving has not appointed or shall not appoint any trustees in whom the same shall be vested for such use, or when the trustees have ceased or shall cease to exist, such lands, moneys, securities and real and personal estate shall be vested in the Commissioners of Public Charities for the use and benefit of the Nova Scotia Hospital for the Insane, to be applied in such manner as the grantor, devisor or giver may have directed.

Commissioners to hold property in trust.

2. The Commissioners of Public Charities may take and hold any real or personal property hereafter to be granted, devised, bequeathed or given to them in trust for the benefit of the Nova Scotia Hospital for the Insane for such use and in the manner directed by such grantor, devisor or giver.

Commissioners may bring action for recovery of property.

3. The Commissioners of Public Charities may bring and maintain such actions or suits as the circumstances may require for the recovery of any real or personal property which of right ought or should be held for or to the use of such hospital.

How Commissioners are to invest moneys received.

4. Such Commissioners of Public Charities shall invest any moneys received by them under the authority of this Chapter (when such investment is not contrary to the terms of the grant, devise, bequest or conveyance) in debentures of the Dominion of Canada or of the City of Halifax, or in real estate, or otherwise, as the Governor-in-Council may direct.

## CHAPTER 35.

## OF THE SETTLEMENT AND SUPPORT OF THE POOR.

Meaning of words township and settlement.

1. The words, township and settlement, when used in this title shall be held to mean any district set off and established as a district for the support of the poor.

Appointment of overseers.

2. The council of each municipality shall annually out of every poor district appoint three freeholders to be

overseers of the poor; and if any person so appointed shall cease to reside in any such poor district or shall die within the period for which he was appointed, the warden and any three councillors may appoint another to act instead until the next meeting of the council, and such overseers and their successors in office shall be a body corporate. CHAP. 35.

3. Every person who has lived as a hired servant one whole year therein under an agreement to serve the same master one whole year then next before application for relief, or has executed a public annual office therein, or has been assessed and paid his share of poor or county rates in the poor district during one year at one time, shall be entitled to a settlement; and any person who shall have resided in any poor district for three years consecutively, after arriving at the age of twenty-one years, and who during that time shall not have received aid from the overseers of the poor as a pauper, shall have a settlement in such poor district; and all persons under the age of twenty-one years who have served an apprenticeship within any poor district to any trade for the space of two years shall have a settlement therein.

4. The settlement of any legitimate child shall be that of the father, if the father have any; if not, that of the mother, if the mother have any. Illegitimate children shall have the settlement of the mother, if the mother have any; but in case a child has no settlement by parentage, the birthplace of such child shall be the place of settlement.

5. A married woman shall have the settlement of her husband if the husband have any; if not, her own settlement if she have any shall not be suspended by her marriage.

6. A legal settlement shall cease when a new one is gained, and shall not revive.

7. When a poor district shall be divided or a new district created, the settlement of any person dwelling and having a settlement within such divided or newly created poor district shall be within the limits of the district in which such person may have dwelt at the time of such division or creation.

8. Any person applying to the overseers of the poor of any township for relief who shall not have obtained a settlement therein shall be required to declare on oath before a justice of the peace his last place of residence; and if he be found to have gained a settlement within the Province, a copy of the declaration certified by the justice with the amount of expense necessarily incurred for his relief and examination, shall be transmitted to the overseers

**CHAP. 35.** of the poor of the township to which such person belongs, and the same shall be paid by them.

If the overseers of the place of pauper's settlement refuse to remove him, a warrant for his removal may issue.

9. If such last mentioned overseers refuse or neglect to remove such person, two justices by a warrant shall cause such person to be removed to the township where a last settlement has been obtained; and the overseers of the poor there shall receive such person and pay to the overseers of the first named township the necessary expense incurred about his removal and for his relief previous to such removal. If the overseers of the last named township have no money in hand to pay such expense, they shall stand charged therewith until the next assessment made on the township to which such person belongs.

Examination when pauper insane.

10. In the event of any pauper whose examination it may be necessary to take as to his last place of settlement being insane, or otherwise incapable or incompetent to undergo such examination, any justice may take such other testimony under oath as to the settlement of such pauper as to such justice may appear satisfactory; and thereupon such pauper may be removed as if he had been personally examined.

Persons near of kin and able, required to maintain their poor relations.

11. The father, grandfather, mother, grandmother, children and grandchildren respectively of every old, blind, lame, impotent or other poor person not able to work, being of sufficient ability, shall relieve and maintain at their own charge every such poor person as the municipal council shall direct, and in case of refusal shall forfeit a sum not exceeding two dollars per week for such poor person, to be sued for in the name of the overseers of the poor as a debt.

Property of persons forsaking their families may, if necessary be seized and sold for their support.

12. Where any husband or father shall forsake his wife or children, or any widow shall forsake her children and leave them a public charge, two justices, on the application of the overseers of the township, shall issue a warrant to seize the goods, and to let out and receive the annual rents and profits of the lands of such husband, father or widow towards the maintenance of such wife, child or children; and any two overseers may, as occasion shall require, dispose at public sale of such goods or so much thereof as shall be necessary, and shall apply the proceeds towards the maintenance of such destitute persons.

Children supported where parents had settlement.

13. The children of deceased parents who have gained a settlement in any township shall, if paupers, be supported by such township.

Appeals provided for party aggrieved.

14. If any overseers on behalf of the poor district or any other person shall feel aggrieved by any proceedings under this Chapter, such overseers or person may appeal to the next sitting of the county court to be held in the

county where such poor district is or the person shall CHAP. 35.  
reside, and the county court shall hear and determine  
the same.

15. If the judge on an appeal concerning the settlement of a poor person determine that such poor person was unduly removed he shall order to be paid to the appellants any money that may have been paid by such appellants or may be due from them as overseers on account of such poor person between the time of the undue removal and the determination of the appeal, the same to be recovered as hereinafter provided.

Proceedings on appeal where person has been unduly removed.

16. Upon the determination of an appeal concerning the settlement of a poor person or upon proof of notice of an appeal given by the appellant to the adverse party, though the appeal be not prosecuted, the judge sitting to hear the appeal shall order to the successful party on a trial or to the party notified if not further prosecuted, such costs as in his discretion are reasonable, to be taxed and allowed according to the rates adopted in the County Court, which shall be paid by the unsuccessful party or by the party giving such notice.

Costs on appeal, how taxed and allowed.

17. If the overseers or other person ordered to pay such sum of money or costs shall after service of a copy of such order refuse to pay the same, the party in whose favor such order is made may sue for and recover the amount as if it were a private debt, with costs; and the production and proof on the trial of the order or copy thereof and of the service thereof shall be sufficient proof of the debt.

Amount ordered to be paid, how recovered.

18. Every township shall be liable to pay any expense which shall necessarily be incurred for the relief of a pauper by any person who is not liable by law for his support, after notice and request made to the overseers of the township and until provision shall be made by them.

Townships liable for support of poor after notice.

19. If any person shall bring any poor and indigent person into any township where such person has not a lawful settlement, knowing him to be poor and indigent, and shall leave him therein with intent to charge such township with his support, he shall forfeit a sum not exceeding eighty dollars for every such offence.

Penalty for improperly bringing a pauper into a township.

20. Separate suits shall not in future be brought against defaulters, but every collector shall make a general return to a justice within the township, or if none reside there, to any justice of the county, of every person upon his list who after demand made shall not have paid his rate; and the collector shall make oath in writing before such justice, setting forth the name of every defaulter, the sum assessed, that the demand has been made, and that the rate is unpaid; and thereupon such justice shall forthwith

Proceedings to collect rates shall be by general warrant of distress; form given, fees, &c.

CHAP. 35. issue a general warrant of distress against the several defaulters in the form of the schedule, directed to a constable or to such collector, commanding him to levy upon the goods of each person named in the warrant the sum due by such person, with constable's or collector's and justice's fees. The constable or collector shall forthwith execute the warrant and pay over the amount collected to the overseers. The justice's fee for such warrant shall be seventy cents, and the constable's or collector's fee for each person in the warrant shall be twenty cents; but the constable or collector shall have no travelling fees or poundage, and the justice's fee shall be apportioned among the several persons, if more than one, in the warrant.

Appellants to be relieved by the Council of Municipality.

Parties liable to be assessed.

Party who thinks himself over-rated may appeal.

Appropriation of moneys; Collectors may be sued by overseers.

Accounts of overseers, when rendered.

Council to audit accounts.

Fine for refusal to serve as overseer.

21. The council of the municipality at any regular or special meeting as the case may be may relieve appellants as they shall see fit, and may order the overseers of the poor to refund any excess of rates collected.

22. No person shall be assessed for the support of the poor unless in the opinion of the assessors he is able to pay a rate of at least twenty cents annually.

23. If any person thinks himself overrated he may appeal to the next meeting of council thereafter in the municipality wherein the assessment was made, and the order of such municipal council shall be final.

24. The overseers shall apply all sums of money voted and received by them for the purposes specified; and any collector or constable who shall neglect to pay over to the overseers any sum by him collected may be sued by them, and the amount shall be recovered as if it were a private debt.

25. The overseers of the poor shall within one month after the expiration of their term of office render to the clerk of the municipality in which they reside, to be laid before the council, an account of all moneys received and the particulars of all expenditures by them for the support of the poor, and shall account for the same on oath, if required, before such council. In case there is no clerk and treasurer for the district they shall enter their proceedings in a book to be kept for the purpose, and at the expiration of their term of office shall deliver the same and any money in hand unexpended to their successors.

26. The council shall examine the accounts of overseers of the poor when so submitted, and shall allow or disallow the same as shall seem proper, and determine the just balance that may be due thereon.

27. Every person appointed an overseer of poor who shall refuse to serve shall upon summary conviction thereof before a justice of the peace pay a fine of twenty dollars.

28. Overseers of poor who shall not within one month after the expiration of their term of office render to the clerk of the municipality an account of all sums of money received and expended by them, shall upon summary conviction thereof before a justice of the peace pay a fine of twenty dollars.

**CHAP. 35.**  
Fine for neglecting to render accounts.

29. When any person shall apply for and obtain relief from the overseers, or where relief has been given to or for any pauper and it shall happen that such person was at the time possessed of or entitled to any property out of which the expenses so incurred may be re-paid, the overseers may demand and recover from such person, or in case of the decease of such person then from his estate, a re-payment of the expenses so incurred as if it were a private debt, and may for such purpose obtain letters of administration of the estate of such person, and any money recovered shall be accounted for by such overseers as other public money.

Overseers may recover expenditure from property of pauper.

30. In the case of any person applying for and obtaining relief from any poor district, and being the owner of property, real or personal, it shall be lawful for the overseers of said district to accept and take a conveyance of such property, real or personal, to them as overseers of the poor of said district, and to hold the same as trustees for the benefit of the said poor district, or upon the authority of the municipal council, testified by resolution to sell and convey the same, and the proceeds thereof shall be appropriated for the benefit of the said poor district as ordinary funds of the district in the hands of said overseers, and the powers of sale by overseers in this section specified shall apply as well to lands already conveyed to overseers by persons who have obtained relief as paupers.

Overseers may take conveyance of property of pauper.

31. No person being an assessor shall on that account be exempt from assessments; and any assessor who shall neglect to assess himself in a just proportion shall forfeit twenty dollars.

Assessors not exempt, &c.

32. The council shall establish the rate of commission to be allowed to collectors of poor rates, but the same shall not exceed five per cent.

Commissions to collectors.

33. All forfeitures under this Chapter when recovered shall be applied to the support of the poor of the township.

Forfeitures, how applied.

34. This Chapter shall extend to the City of Halifax in all cases where its provisions are not inconsistent with those in the Act concerning the city, passed in the session of 1864, and the amendments thereto.

Chapter, how far applicable to City of Halifax.



CHAP. 35.

Board of poor not to be auctioned.

35. It shall not hereafter be lawful for the overseers to provide for the maintenance of the poor by putting up the same at public auction.

Poor and County rates in same warrant.

36. In issuing general warrants for the collection of poor rates and county rates payable at the same time and to the same collector, the defaulters for both rates shall be included in one warrant; and the form of the warrant in the schedule to this Chapter, or that in Schedule F of the Chapter entitled, "Of Municipal Assessments," so altered as to answer the purpose of collecting both rates, shall be used.

When the word township may be read as poor district.

37. The word township wherever the same is used in this Chapter may be read as poor district with respect to all proceedings under this Chapter in reference to matters arising in a township divided into separate poor districts.

SCHEDULE.

Form of general warrant of distress.

Municipality of \_\_\_\_\_, } To A. B., one of the constables (or C. D., one of the collectors) of the said County.

Whereas, by a rate and assessment made in conformity with law the persons named in the schedule have been assessed for poor rates for a period ending the \_\_\_\_\_ day of \_\_\_\_\_; and whereas it appears to me, one of the justices of the peace for such county, upon the oath of C. D., one of the collectors for the township of \_\_\_\_\_, (or of you the said C. D., collector as aforesaid) that the several sums for which they have been assessed have been demanded from such persons respectively, and that the sums set opposite their names in the schedule hereto annexed remain unpaid: These are therefore to require you forthwith to make distress of the goods and chattels of the persons mentioned in the schedule; and if within the space of five days next after such distress by you taken the sums in the schedule set opposite their respective names, together with their proportion of justice's and constable's (or collector's) fees, and the necessary charges of taking and keeping the distress, be not paid by each of them respectively, that then you do sell the goods and chattels of such of them as shall not have paid such sums with fees as above mentioned; and out of the moneys arising from such sale you do forthwith pay over the sums so due by them respectively to the overseers of the poor, together with the justice's and

constable's (or *collector's*) fees, if any; and that you do CHAP. 36.  
 render to the owners of the goods respectively upon demand the surplus remaining from such sale, the necessary charges of taking, keeping and selling the distress being first deducted. And if no such distress can be made, that then you certify the same to me.

Given under my hand and seal the — day of —, A. D. 18—.

(Signed) E. F., J. P. (Seal.)

## CHAPTER 36.

### OF POOR DISTRICTS.

1. Poor districts as now established shall so continue until altered by law. To continue as now established.

2. If twenty or more of the rate-payers within any district for the support of the poor shall by petition apply to the council, stating their desire that an alteration or alterations should be made in the boundaries of any poor district and setting forth the proposed boundaries thereof, the council may if they think fit pass an order calling upon the parties interested to shew cause at the next council meeting why such division or alteration should not be made. Boundaries of poor districts, how altered.

3. Copies of such order setting forth particularly such proposed boundaries shall be posted up in at least five of the most public places within the district sought to be altered for at least thirty days next previous to the ensuing meeting of council. Notice of alteration of boundaries.

4. At such meeting the council may if they think fit make an order altering the district either by the boundaries so proposed or by such other boundaries as may be deemed proper into as many districts as may be thought necessary for the future support of the poor within the same, with a name or designation to each. Council may alter boundaries.

5. The council shall thereupon also ascertain the number of paupers then chargeable on the whole district and the amount required for their support, and by order direct the proportion to be borne by each of such new districts; and thereafter the expenses of paupers shall be chargeable on the district in which a settlement shall have been gained. Council may, by order, adjust expenses and the support of present paupers.

6. The council may at any time alter or make anew any order in relation to the expenses of paupers chargeable at the date of their first order on the whole district, thereby Council may re-adjust expense and subsequent orders.

CHAP. 37. to effect a more equal distribution of such expenses rendered necessary by any increase or diminution thereof.

Rates pending at such division not thereby invalidated.

7. All rates, assessments, suits or actions pending at the date of such first order may be prosecuted, levied and collected as if such division had not been made.

## CHAPTER 37.

### OF THE MAINTENANCE OF BASTARD CHILDREN.

Information of woman pregnant with bastard child, how taken and justices warrant thereon.

1. If any woman shall become pregnant with a bastard child likely to become chargeable to any poor district, she shall make oath in writing before a justice for the county where she resides that she is so pregnant, and who is the father of the child; and such justice shall forthwith issue his warrant to apprehend the reputed father and cause him to be brought before him or some other justice of the county.

Reputed father to enter into bonds until after the birth.

2. The reputed father when brought before a justice shall be required to enter into a bond, with a surety, to indemnify such poor district until after the birth of the child and until an order of filiation shall be made thereon, or till the reputed father be discharged on examination and hearing preparatory to the passing such order, and in default shall be committed to jail to remain until such examination and hearing can be had or such bond given.

Hearing after birth and order of filiation.

3. As soon as convenient after the birth of the child two justices, on application of an overseer of the poor or some substantial householder of such poor district, shall issue a warrant to bring the mother and reputed father before them at a time and place therein mentioned, and shall hear the evidence of the mother, the reputed father, and of any other person, and shall either discharge the reputed father or make an order of filiation to indemnify the poor district for the expenses connected with the lying-in and maintenance of the mother and the birth and maintenance of the child to the date of the order, and that the reputed father pay such sum weekly as they shall consider right, respect being had to his ability, towards the support of the bastard child while chargeable to such poor district.

When reputed father not found, or in another jurisdiction, warrant may be endorsed over.

4. If the person against whom any warrant shall issue under the provisions of this Chapter shall not be found within the jurisdiction of the justice or justices issuing the same, or if he shall be suspected to be in any place

within the Province, a justice of the county or place where such person shall be or be suspected to be, upon proof made upon oath of the handwriting of the justice or justices issuing the warrant, may make an endorsement as nearly as may be in the form hereto annexed, upon such warrant, signed with his name, and authorizing the execution thereof as thereon endorsed, and the carrying of the person therein named when apprehended before the justice or justices who first issued the warrant. CHAP. 37.

5. The reputed father shall then enter into a bond with one surety to fulfill the order of filiation, or shall pay to the overseers of the poor eighty dollars for the support of each such child or other town uses; and in default shall be forthwith committed to jail for a time not to exceed six months, or until he shall have entered into such bond or paid the eighty dollars. Reputed father shall give a bond to fulfil the order or pay \$80, or suffer six months' imprisonment.

6. In case a party on whom an order of filiation has been made shall fail to give bonds to fulfil the same, or shall fail to pay to the overseers of the poor the sum of eighty dollars as required by section five, or shall not have been committed to jail thereunder, it shall be lawful for two justices of the peace, on application of an overseer of the poor or some substantial householder of the said township, to issue a warrant of distress against such party, directed to a constable, commanding him to levy off the goods and chattels of such person the said sum of eighty dollars, with constable's and justices' fees; which sum when so collected shall be paid over to the overseers of the poor for the support of such child or other town purposes, and such proceeding shall relieve the said party from further liability in reference to such order of filiation. When person on whom order of filiation has been made fails to pay \$80, or give bonds, and is not imprisoned, two justices may issue distress for amount.

7. If the mother of a bastard child shall not previously to its birth have made oath in writing before a justice disclosing the reputed father, any justice may at any time within three months after the birth, on application of an overseer of the poor of the poor district where the child has been or is likely to become chargeable, take the oath of the mother in writing, declaring who is the father of such child; and thereupon two justices shall issue a warrant to bring the reputed father and mother before them at a time and place therein named, and such proceedings shall be had thereon as directed in cases where the mother has disclosed the name of the father before the birth. Information within three months after birth and justices warrant thereon.

8. If any reputed father shall conceal himself or so avoid service of a warrant that he cannot be brought before the justices as therein directed for hearing and examination, then they may make up their order of filiation When reputed father cannot be served, order of filiation may be made in his absence; proceedings thereon.

**CHAP. 37.** in his absence and issue their warrant to bring him before them at a subsequent day and place therein mentioned, to shew cause why he should not obey the order and enter into a bond to indemnify the poor district from the charge of such child.

Such order may be subsequently confirmed or reversed; proceedings thereon.

9. At the time and place appointed the justices shall proceed to confirm, reverse or modify such order, or make a new order of filiation as may seem right, and thereupon the reputed father shall immediately enter into a bond with one surety to perform the order so confirmed, modified or made anew, or shall pay eighty dollars for the support of the child or other town uses, and in default shall be liable to the penalties and imprisonment hereinbefore prescribed for non-performance of an order of filiation.

Appeal from order of filiation.

10. If either party feel aggrieved by an order of filiation or by the refusal to make such order he may appeal to the next sitting of the County Court to be held in the county, where the whole matter may be heard and tried as a civil action and the order of filiation confirmed or quashed, and the decision of such court shall be final; but before such appeal shall be granted the reputed father shall enter into a bond with one surety approved by the justices making the order, to perform the order of filiation if confirmed, and in such case to pay the costs incurred by the overseers in consequence of the appeal. All orders made by a judge of the County Court directing justices of the peace to make any order of filiation shall be obeyed by the justices of the peace to whom it is directed.

Power of justices to control expenses in making order, &c.

11. Upon the examination and hearing preparatory to making an order of filiation the justices may direct that the mother shall bear a part or the whole of the expense of the maintenance of such child, either by nursing the child or as otherwise directed in the order of filiation, or make any other order in relation thereto.

Overseers may sue bonds; death or removal from office shall not abate suit.

12. The overseers for any poor district may sue in their own names upon any bond entered into under this Chapter whether made to them or their predecessors in office, and such suit shall not abate by the death or removal from office of such overseers of the poor or any of them.

Forms.

13 The following forms shall be used and adhered to as nearly as may be:—

*Examination of mother previous to birth of child.*

County of ———, SS.

The examination of A. B., of ———, in the county of ———, taken on oath before me, who deposes that she is

with child which is likely to be born a bastard and to be chargeable to the poor district of \_\_\_\_\_, and that C. D., of \_\_\_\_\_, is the father of such child. CHAP. 37.

A. B.

Sworn before me, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 188—.

E. F., J. P.

\_\_\_\_\_

*Warrant to apprehend the reputed father before the birth.*

County of \_\_\_\_\_, SS.

To any of the constables of the said county.

Whereas A. B., of \_\_\_\_\_, in the said county, hath by her examination in writing taken upon oath before me this day declared herself to be with child, which is likely to be born a bastard and to be chargeable to the poor district of \_\_\_\_\_, and that C. D., of \_\_\_\_\_, is the father of such child, I do hereby command you to apprehend the said C. D. and bring him before me or some other justice for the said county to find security to perform any order of filiation that may be made, or in default thereof to commit him to jail, there to remain until an order of filiation shall be made.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

E. F., J. P. (seal.)

\_\_\_\_\_

*Form of a commitment where a reputed father when brought up before birth of child refuses to enter into bond of indemnity, to be endorsed on the warrant.*

Whereas the within-named C. D., now before me, hath refused to enter into a sufficient bond to perform an order of filiation if made, I hereby order that he be committed to jail, there to remain until he shall have given such bond or be brought up for further examination in the premises.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

E. F., J. P. (seal.)

\_\_\_\_\_

*Endorsement backing a warrant.*

County of \_\_\_\_\_.

Whereas proof upon oath has this day been made before me, \_\_\_\_\_, a justice of the peace for the county of \_\_\_\_\_, that the name of \_\_\_\_\_, to the within warrant subscribed, is the handwriting of the justice of the peace within mentioned, I do therefore hereby authorize A. B., who

CHAP. 37. bringeth me this warrant, and all other persons to whom the same was originally directed, or by whom it may be lawfully executed, and also all constables and other peace officers in this county, to execute the same within this county, and to take the said C. D., if apprehended within this county, before the justice (*or justices, as the case may be*) who issued such warrant, to be further dealt with according to law.

Given under my hand this — day of —, A. D. 18—,  
E. F., Justice of the Peace for —.

—————

*Examination of mother after the birth of child.*

County of —, SS.

The examination of A. B., of —, in the said county —, taken upon oath before me, who deposes that on the — day of —, last past, at —, she, the said A. B., was delivered of a (*male or female*) bastard child, which is likely to become chargeable to the poor district of —, and that C. D., of —, is the father of such child.

A. B.

Sworn to before me this — day of —, A. D. 18—.

E. F., J. P.

—————

*Bond of indemnification.*

Know all men by these presents that we, C. D., of —, in the county of —, and G. H., of —, in the same county —, are held and firmly bound unto the overseers of the poor for the poor district of —, in the said county, and their successors in office, in — dollars, to be paid to the said overseers of the poor or their successors in office or assigns; for which payment well and truly to be made we bind ourselves and each of us by himself, our and each of our heirs, executors and administrators, firmly by these presents, sealed with our seals. Dated this — day of —, A. D. 18—.

Whereas A. B., of —, hath declared on oath that she is with child, which is likely to be born a bastard and to be chargeable to the poor district of —, and the above bounden C. D. is the father of such child.

Now the condition of this obligation is such that if the said C. D., his executors or administrators, do and shall

perform any order of filiation that may be made upon him CHAP. 37.  
in the premises, then this obligation to be void.

Signed, sealed and delivered in presence of	J. K. }	C. D. (seal.)
		G. H. (seal.)

—————

*Warrant to bring up mother and reputed father after birth  
of child.*

County of ———, SS.

To any of the constables of the said county.

Whereas A. B., of ———, in the said county ———, hath by her examination in writing on oath, taken before us, declared that on the ——— day of ——— last past, she was delivered of a (*male or female*) bastard child in the poor district of ———, and that C. D., of ———, is the father of such child, and that such child is now living and chargeable to the poor district of ———, and the overseers of the poor of such poor district have applied to us to issue this warrant;

These are to command you that you bring the said A. B. and the said C. D. respectively before us at the ——— of ———, in the said county, on the ——— day of ———, at the hour of ———, to be by us further examined, that we may make such order thereon as to right may appertain, and also that you do personall<sup>v</sup> attend at the same time and place.

Witness our hand... and seals this ——— day of ———, A. D. 18—.

E. F., J. P. (seal.)

L. M., J. P. (seal.)

—————

*Order of filiation.*

County of ———, SS.

The order of E. F. and L. M., esquires, two justices for the said county, concerning a (*male or female*) bastard child lately born in the poor district of ———, of A. B.

Whereas upon the oath of the said A. B. it hath appeared unto us that on the ——— day of ——— last past, she was delivered of a (*male or female*) bastard child in the poor district of ———, and that such child is now chargeable to the poor district of ———, and likely so to continue, and that C. D., of ———, is the father of such child;



CHAP. 37. And whereas the said C. D. hath been brought before us by our warrant (or "*hath refused to appear,*" as the case may be) to answer the premises, but hath not shewn sufficient cause why he shall not be deemed to be the father of the child;

Wherefore upon an investigation of the matter as well upon the oath of the said A. B. as otherwise, we hereby adjudge the said C. D. to be the father of such child, and thereupon we order as well for the relief of the poor district of ——— as for the sustenance of such child, that the said C. D. shall forthwith, upon notice to him given of this our order, pay to the overseers of the poor for the said poor district the sum of ——— towards the lying in of the said A. B. and the maintenance of such child up to this date;

And further that the said C. D. shall pay to the overseers of the poor of the said poor district for the time being the sum of ——— weekly from the date hereof during so long time as the child shall remain chargeable to such poor district, towards the maintenance of such child. And we order that the said A. B. shall also pay to the overseers of the poor of the poor district the sum of ——— weekly so long as the child shall be chargeable to the poor district in case she shall not herself take care of the child.

Given under our hands and seals this — day of ———,  
A. D. 18—.

E. F., J. P. (seal.)

L. M., J. P. (seal.)

*Commitment to be endorsed upon the order of filiation.*

County of ———, SS.

Whereas C. D. within named hath refused to comply with the within order or to give sufficient bonds to the overseers of the poor to indemnify the poor district of ——— in the said county in respect of the support of the child within referred to, we hereby direct the high sheriff of the county or the jailer to receive the said C. D. and commit him to jail, there to remain in close confinement for the space of ———, or until he shall have given such bond, or shall otherwise be removed according to law.

Witness our hands and seals this — day of ———,  
A. D. 18—.

E. F., J. P. (seal.)

L. M., J. P. (seal.)

*Warrant to apprehend reputed father after order of filiation, where he shall have avoided service of previous warrant.* CHAP. 37.

County of ———, SS.

To any of the constables of the said county.

Whereas a warrant was issued by us to bring before us on the ——— day of ———, A. B., of ———, and C. D. of ———, which said A. B. appeared under the said warrant, but the said C. D. could not be found; and on hearing the evidence then adduced before us we did make an order of filiation in the absence of the said C. D., but he the said C. D. has not complied therewith: these are therefore to command you to bring the said C. D. before us at the ———, on the ——— day of ———, at ——— o'clock, that he may be examined by us touching such order of filiation, and shew cause why he should not comply with such order, and enter into bonds for the performance thereof, and otherwise to be dealt with according to law.

Given under our hands and seals this — day of ———, A. D. 18—.

E. F., J. P. (seal.)

L. M., J. P. (seal.)

The form of commitment the same as that under the order of filiation where the father shall have been present.

*Bond to abide and fulfill the order of filiation.*

Know all men by these presents that we, C. D., of ———, in the county of ———, and G. H., of ———, in the same county ———, are held and firmly bound unto the overseers of the poor for the poor district of ———, in the said county, in ——— dollars, to be paid to the said overseers of the poor and their successors in office or their certain attorney, executors, administrators and assigns, for which payment to be well and truly made we bind ourselves and each of us by himself, our and each of our heirs, executors and administrators, firmly by these presents, sealed with our seals. Dated this ——— day of ———, A. D. 18—.

Whereas by an order of filiation made by ——— and ———, esquires, two justices of the county aforesaid, in the matter of a bastard child lately begotten on A. B., the said C. D. hath been adjudged to be the father of such child, and to obey such order of filiation. Now the condition of this obligation is such that if the said C. D.,

CHAP. 37. his executors or administrators do well and truly obey such order of filiation, then this obligation shall become void.

Signed, sealed and delivered }	C. D. (seal.)
in presence of J. K. }	G. H. (seal.)

*The like, where an appeal from such order shall have been made to the Supreme Court or County Court.*

Know all men by these presents that we, C. D., of ———, in the county of ———, and G. H., of ———, in the same county ———, are held and firmly bound unto the overseers of the poor for the poor district of ———, in the said county, in ——— dollars, to be paid to the said overseers of the poor and their successors in office for the time being, of the said township of ———, or their certain attorney, executors, administrators and assigns, for which payment to be well and truly made we bind ourselves and each of us by himself, our and each of our heirs, executors and administrators, firmly by these presents, sealed with our seals. Dated this ——— day of ———, A. D. 18—.

Whereas by an order of filiation made by ——— and ———, esquires, justices of the peace for the county aforesaid in the matter of a bastard child, lately begotten of A. B., the said C. D. hath been adjudged to be the father of such child, and to obey an order of filiation made in that behalf, from which order the said C. D. hath appealed to the county court. Now the condition of this obligation is such that in case such order shall be confirmed by the court, then if the said C. D., his executors or administrators do pay all costs and charges which may be legally incurred by the overseers of the poor for the said poor district in consequence of such appeal, and also do obey such order so confirmed, this obligation shall become void.

Signed, sealed and delivered }	C. D. (seal.)
in the presence of J. K. }	G. H. (seal.)

# TITLE X.

## OF LUNATICS.

### CHAPTER 38.

#### OF LUNATICS, AND THE CUSTODY AND ESTATES OF LUNATICS.

1. Any lunatic being at large may be apprehended under warrant from two justices of the peace, and if his legal settlement shall be in any place within the municipality he shall be secured within the same; and if such settlement shall not be within the county or district he shall be sent by the justices, by order under their hands, to the place of his last legal settlement, and shall be there secured under a warrant from two justices of the peace for the municipality to which he shall be so removed: and the charges of removing, maintaining and curing such person during his restraint having been first proved on oath before two justices, shall be paid out of the proceeds of the personal property, or the rents of the real estate of such person, if any he have over and above what will maintain his family; and such property or rents may for that purpose be seized and sold by the overseers of the poor of the place of such person's last legal settlement under a warrant from two justices; and if such person has not any property or rents applicable therefor, then such expenses shall be borne by the inhabitants of the municipality within which such person shall have his last legal settlement.

Securing of lunatics.

Charges of maintenance, &c.

2. When the relatives or friends of any insane person, or the overseers of the poor of the township or poor district of which he is an inhabitant, shall apply to the supreme court or a judge thereof to have a guardian appointed for him, notice shall be given to such insane person if at large, and if he be under restraint to those having charge of him, of the time and place appointed for hearing the case, not less than fourteen days before the time so appointed; and if after a full hearing it shall appear to the court or judge that the person in question is incapable of taking care of himself, such court or judge shall appoint a guardian of his person and estate with the powers and duties hereinafter specified. Every guardian so appointed shall

Appointment of guardian for lunatics.

**CHAP. 38.** have the care and custody of the person of the ward and the management of his estate until legally discharged.

Evidence, how taken in certain cases.

3. In any case where it is necessary to take evidence respecting such insane person, or touching the estate or person of any lunatic, and it is made to appear by affidavit that it is more convenient to take the evidence of witnesses in the county where he resides, it shall be lawful for the court or judge to order that such evidence be taken before some suitable person residing in the county where such alleged insane person resides, in such manner and under such restrictions as evidence is usually taken in the Court of the Judge in Equity, and the depositions and examinations so taken may be read in evidence at the hearing.

Payment by guardian.

4. When a guardian shall be appointed for an insane person the court or judge shall make an allowance to be paid by the guardian out of the estate of such insane person for all reasonable expenses incurred by the ward in opposing the application.

Guardian to pay out of lunatic's estate, debts, &c.

5. Every guardian of an insane person shall pay all just debts due from the ward out of his personal estate if sufficient, and if not out of his real estate, upon obtaining a license for the sale thereof from the supreme court or any judge thereof. He shall also settle all accounts of the ward, and shall sue for, recover and receive all debts due to him, or may compound for the same and give discharges to the debtors; and he shall appear for and represent the insane person in all legal and equitable suits and proceedings.

Guardian to represent lunatic in all suits.

Guardian to arrange lunatic's estate.

6. The guardian shall also manage the estate frugally and without waste; and shall apply the profits thereof as far as necessary to such insane person's comfortable and suitable maintenance and that of his family; and if such profits be insufficient the guardian may sell or mortgage the real estate upon obtaining a license so to do, and shall apply the proceeds so far as may be necessary to the maintenance and support of such insane person and his family.

Sale of lunatic's estate.

7. On a sale taking place under a license to sell the real estate of an insane person the guardian shall execute in the name of such insane person the deed thereof, which shall convey such real estate to the purchaser either absolutely or by way of mortgage as therein specified, in the same way as if executed by such insane person himself when of sound mind.

Guardian becoming incompetent may be removed.

8. When any guardian so appointed shall remove from the Province, or become insane or otherwise incapable of discharging his trust, or shall be evidently unsuitable therefor, the supreme court or a judge thereof, after notice

to such guardian if resident in the Province, and to all CHAP. 38. others interested, may remove him; and every guardian may upon his own request be allowed to resign his trust when it shall appear proper to the court or a judge to allow such resignation; and upon every such resignation or removal, and also upon the death of any guardian, the court or a judge may appoint another in his stead.

9. Every guardian shall give a bond with sureties to Her Majesty with the following conditions: Guardian to give bond.

*First.*—To make a true inventory of all the real estate and all the goods, chattels, rights and credits of the insane person that shall come to his knowledge, and return the same into the supreme court at such time as the judge shall order.

*Secondly.*—To dispose of and manage all such estate and effects according to law and for the best interests of the insane person, and faithfully to discharge his trust in relation thereto.

*Thirdly.*—To render an account on oath of the property in his hands including the proceeds of all real estate sold by him, and of the management and disposition of all such property, within one year after his appointment, and at such other times as the court or a judge shall direct; and

*Fourthly.*—At the expiration of his trust to settle his accounts with the court or a judge or with the insane person in case of his restoration to reason, or in case of his death with his legal representatives; and to pay over and deliver all the estate and effects remaining in his hands or due from him on such settlement to the person lawfully entitled thereto.

10. The Commissioners of Public Charities for the time being may sue in their corporate name for and recover all sums of money due or to accrue due by virtue of any bonds given for the support and maintenance of patients in the Nova Scotia Hospital for the Insane, whether such bonds have been given to the Commissioners of the Provincial Hospital for the Insane, to the Chairman of the Board of Works, or to the Commissioner of Public Works and Mines. Bond for insane person, how sued

11. The reasonable expenses of the apprehension and removal of any insane person having been verified on oath before the warden or any two justices of the peace, either before or after such removal, and by them allowed, shall upon their order be paid by the treasurer of the municipality out of the municipal funds to the person appointed to apprehend and remove such insane person; and such expenses shall afterwards be levied by warrant of distress Payment of expenses of apprehension and removal of insane person.

CHAP. 38. to be signed by two justices of the peace on any goods or chattels of such insane person, or may be realized out of the real estate of the insane person or the rents thereof as provided in this Chapter; and for want of such property shall be a charge against the municipality in which such insane person shall have had his last legal settlement, as hereinafter provided.

Prevention of crime. of 12. The better to prevent crime being committed by insane persons, if any person shall be discovered and apprehended under circumstances denoting a derangement of mind and a purpose of committing some crime for which if committed such person would be liable to be indicted, it shall be lawful for any two justices of the peace of the county or district before whom such person may be brought to call to their assistance any legally qualified medical practitioner; and if upon order and examination of such person so apprehended or from other proof such justices shall be satisfied that such person is insane or is a dangerous idiot, it shall be lawful for them, by warrant under their hands and seals, to commit such person to the gaol of the county or district, there to be kept in strict custody until such person shall be discharged by the order of two justices of the peace, one of whom shall be one of the justices who shall have signed such warrant, or by a judge of the supreme court, or until such person shall be removed to a proper lunatic asylum, or to the custody of guardians appointed under this Chapter.

Examination of insane persons and expenses thereof. 13. Any two justices may inquire into and ascertain by the best legal evidence that can be procured under the circumstances of the personal legal disability of such insane person or dangerous idiot, the place of the last legal settlement of such person, or of any other person tried and acquitted on the ground of insanity, or of any person found insane under any provisions of this Chapter; and it shall be lawful for such two justices to make an order, under their hands and seals, upon the overseers of the poor of the township or place where they adjudge him to be legally settled, to pay all reasonable charges of examining such person and conveying him to such county or district gaol, and to pay such weekly sum for his maintenance in such place of custody, as such two justices, or any two justices shall, by writing under their hands, from time to time direct; and where such place of settlement cannot be ascertained such order shall be made on the treasurer of the municipality where such person shall have been in custody or apprehended: Provided always that nothing herein contained shall be construed to extend to restrain or prevent any relative, guardian or friend from taking

such insane person or dangerous idiot under his own care and protection if he shall enter into a sufficient recognition for the peaceable behavior or safe custody of such insane person or dangerous idiot before two justices of the peace or a judge of the supreme court: and provided also that the overseers of the poor of the township or place in which the justices shall adjudge any insane person or dangerous idiot to be settled, may appeal against any such order to the municipal council for the county or district where such order shall be made in like manner and under the like regulations and restrictions as against any order of removal, giving reasonable notice thereof to the clerk of the municipality of the county or district upon whose rates the burden of maintaining such insane person or dangerous idiot might fall if such order should be invalid; and such clerk of the municipality shall be respondent in such appeal, which appeal the said council are hereby authorized and empowered to hear and determine in the same manner as appeals against orders of removal of paupers are now heard and determined. CHAP. 38.

14. All charges herein mentioned that may be incurred by any overseers of the poor for any township or place, or by any municipality under this Chapter, having been first proved on oath before two justices, shall be repaid to such overseers or to the treasurer of the municipality, as the same may have been incurred, out of the proceeds of the personal property or the rents of the real estate, or if necessary the real estate itself of such insane person or dangerous idiot if any he have over and above what will maintain his family, which may for that purpose be seized and sold by such overseers or municipal treasurer under a warrant from two justices; and for want of such property such expenses shall be paid by the municipality in which such insane person or dangerous idiot shall have had his last legal settlement; and the same shall be a county or district charge, to be assessed, levied and collected in the same manner as county rates. Payment of expenses incurred by overseers of poor.

15. Any person shall be deemed a legally qualified medical practitioner for the purposes of this Chapter who would not be disqualified by law from recovering a fee or reward for his professional services. Qualification of medical practitioner.

#### HOSPITAL FOR THE INSANE.

16. The title of the above institution shall be the "Nova Scotia Hospital for the Insane;" and its object shall be the most humane and enlightened curative treatment of the insane of this Province. Title and object of hospital for insane.



## CHAP. 38.

Management of hospital.

Visitors.

By-laws.

Appointment of medical superintendent.

Medical assistant.

Admission of patients.

Statement in writing to be given to superintendent.

17. The financial and general management of the hospital shall be vested in the Commissioners of Public Charities. The following persons shall be *ex officio* visitors of the hospital, that is to say, the Lieutenant-Governor, the Chief Justice, the Provincial Secretary, the President of the Legislative Council, the Speaker of the House of Assembly, the Committee of the House of Assembly on Humane Institutions, and the heads or authorized representatives of all the christian churches in the Province. The Commissioners of Public Charities shall make all needful by-laws for the government of the hospital, not inconsistent with the laws of the Province; but before such by-laws shall have effect they shall be submitted to and approved of by the Governor-in-Council.

18. The Governor-in-Council shall appoint a medical superintendent, who shall be a well educated physician, and shall, with his family, reside on the premises, and devote his whole time to the welfare of the institution, and whose salary shall be two thousand dollars a year, with fuel, gas and lodging.

19. The Governor-in-Council shall also appoint a medical assistant, who shall be a well educated physician, and shall, with his family, reside on the premises, and devote his whole time to the welfare of the institution, performing his duties under the direction of the medical superintendent, and who shall receive a salary of twelve hundred dollars a year, with fuel, gas, board and lodging.

20. Whenever there are vacancies in the hospital the Commissioners of Public Charities shall admit patients for whom admission is sought; but they shall have power to refuse cases that are not suicidal, or dangerous through violence to others, and that are from long standing not likely to be benefitted by treatment in the hospital, and also epileptic or idiotic cases.

21. In every case where admission is sought for a patient, a statement in writing in the form of Schedule A shall be filled up and sworn to before some justice of the peace by a party cognizant of the facts therein contained, and forwarded to the medical superintendent for examination; and his answer and approval shall be received before the patient is forwarded. No person shall be received into the Hospital for the Insane as a patient, without a certificate as in Schedule B, from two qualified medical practitioners in actual practice in the Province, of whom the one shall not be the son, brother, partner or assistant of the other; the examination therefor having been made not more than thirty days before admission.

22. In case of private paying patients, a bond shall be given to the Commissioners of Public Charities with sufficient sureties, for payment of expenses, and a payment of one quarter's board shall be made in advance. Such bond may be sued on as often as shall be necessary, and recovery had in the supreme or county courts, according to the amount sued for and according to the ordinary practice of the court in like cases.

CHAP. 38.

Private paying patients.

23. In case of the committal of an insane person to the Hospital for the Insane, the warrant therefor shall be in the form in Schedule C, and shall be issued by the sheriff or two justices of the peace of the municipality in which the insane person shall be found; and such insane person shall be chargeable to the municipality from which he shall have been sent to the hospital under such warrant, unless it shall be shewn to the satisfaction of the Commissioners of Public Charities that such insane person is legally chargeable as a pauper to some other municipality, or has no legal settlement in the Province, or is chargeable to a guardian or other person.

Warrant of commitment.

24. The Commissioners of Public Charities shall have power to investigate and determine any disputes that may arise as to the municipality chargeable for the maintenance of a patient in such hospital; and, before the Commissioners shall decide in the matter they shall give reasonable notice to the municipalities interested, through their clerks, of the time and place of such investigation; and at such time and place shall hear the evidence and allegations that shall be adduced respecting the matters in dispute, and decide accordingly. Such decision shall be final and binding in law upon the municipalities and parties interested.

Settlement of disputes between counties chargeable for maintenance of insane.

25. Whenever any person shall be so deranged in his intellect that he cannot be permitted to go at large without danger, or is suffering unnecessary duress or hardship, it shall be the duty of the sheriff or any two justices of the peace of the county or district in which such insane person may be found, on being applied to for that purpose, to investigate the case and summon to their assistance any one or more medical practitioners duly qualified and practising within the Province; and if such insanity be proved and certified by such medical practitioner or practitioners as in Schedule B, the sheriff or justices shall issue a warrant as in Schedule C, directed to any constable of the county or district, who shall apprehend such insane person and convey him to the Nova Scotia Hospital for the Insane, after having obtained an order of admission as directed in section 20; and when such insane person is found to have had his last legal settlement in any other county, district or place,

Duty of sheriffs and justices to investigate cases of insanity.

CHAP. 38. and if on investigation the sheriff or justices consider and determine that to send such insane person to his place of legal settlement, as provided in the first section of this Chapter, would be dangerous or prejudicial to such insane person's life or health, such insane person having complied with the requirements above specified in this section, may be sent directly to the Hospital for the Insane, and the proceedings to recover the expenses incurred therefor shall be as provided for in such first section.

Certificate of two practitioners required.

26. In case such person shall have been certified to be insane by only one medical practitioner, before his apprehension, he shall be again examined and certified as in Schedule B by two duly qualified practitioners, to be appointed by the Commissioners of Public Works and Mines, before he shall be admitted into the hospital.

Expenses of pauper lunatics.

27. The expenses of all pauper lunatics, now or hereafter confined in the Hospital for the Insane, shall be chargeable on the respective municipalities in which they shall have obtained legal settlements; and such expenses shall in each case be a municipality charge, to be assessed, levied and collected in the same manner as county rates; and in case the pauper lunatic shall not have obtained a legal settlement within the Province, the expenses shall be paid out of the Provincial Treasury.

Council of any municipality refusing to assess municipality for expenses of lunatics. Supreme Court to amerce.

28. In case the council of any municipality which shall be liable for the expenses of lunatics confined in the hospital shall refuse or neglect to assess such municipality therefor or neglect or refuse to levy, collect and pay into the Provincial Treasury the amount for which it is liable, the supreme court or a judge thereof, at any term in the county so liable, shall upon application by the Attorney-General or a barrister of such court by him authorized, amerce such municipality for the amount due, which with the costs and expenses attending such amercement, shall be assessed, levied and collected under the order of the supreme court or a judge thereof, by the same persons whose duty it shall be to assess, levy and collect the municipal rates, and in the same manner as amercements on municipalities for other purposes are now by law made; and the same when collected shall be paid into the Provincial Treasury.

Refusing to pay expenses of maintenance.

29. If the guardian or other party to whom the expense of any patient who shall be in the hospital is chargeable shall neglect, or, upon demand made, shall refuse to pay to the Commissioners of Public Charities the expense of the care, maintenance and removal of such patient, and also, in the event of death, the funeral expenses of such patient, such Commissioners are hereby authorized and empowered

to collect the same by suit in their corporate name as an ordinary debt; and on the trial of such cause a certified account from the Commissioners of Public Charities shall be sufficient proof of the amount of such charges and expenses. CHAP. 38.

30. The Commissioners of Public Charities, in the case of patients now in the Hospital for the Insane, or on whose behalf admissions are sought, and where in their judgment there are circumstances justifying a departure from the ordinary rates, may make special agreements for the amount and payment of board; and where a patient from violence or otherwise requires a special or extra attendant, such extra attendance shall be charged and paid for in the same manner as the ordinary charges. Commissioners of public charities may alter rate of charges in certain cases.

31. When the funds or property of a private paying patient in the Nova Scotia Hospital for the Insane (above what will maintain his family) which may for that purpose be seized and sold shall have been exhausted, it shall be the duty of the warden and clerk of the municipality in which such patient has a legal settlement, on application made by the guardian or friends of such patient therefor, to investigate the case; and if it is found that the patient is in such indigent circumstances, such warden and clerk shall order the expenses to be made a charge on the municipality; and such order shall be forwarded to the Commissioners of Public Charities, who on the receipt of the same shall from that date charge the expenses of such patient to such municipality; and shall on the payment of all arrearages due cancel the bond given on behalf of such patient; or if on such investigation it is found that a part of the expense can be borne by the patient, an agreement may be made whereby such part shall be paid to the treasurer of such county or district. In case estate of lunatics is exhausted.

32. Whenever the real and personal estate of any lunatic or insane person, not being a pauper, or of the husband, father or mother of such lunatic or insane person, is not more than sufficient to maintain the family of any such person, the expenses of the maintenance of the insane person in the hospital may be defrayed in whole or in part from the funds donated or to be donated for that purpose to the hospital, as the Commissioners of Public Charities may on investigation order and direct. Further regulations for maintenance.

33. The Commissioners of Public Charities, upon the medical superintendent's certificate of recovery, amendment, harmlessness or unsuitableness, may discharge any patient except those under criminal charges; and the parties liable Discharge of recovered patients.

CHAP. 38. for the maintenance of such patient shall be duly notified of such discharge and the terms thereof: Provided that patients under criminal charges shall be discharged only as by law directed. \*Patients who have been for more than six months under care in the hospital, and have so far recovered as to be capable of being taken care of in a private family, may be discharged on trial in care of their relatives or friends, or failing these, may be boarded out on such conditions and at such rate of payment as the Commissioners of Public Charities shall direct, which rate of payment shall not exceed the charge made for the maintenance in the hospital of such patients. Such patients so discharged or so boarded out shall be under the supervision and inspection of the medical superintendent, on whose report any such patient shall if necessary be re-admitted to the hospital, or if recovered be finally discharged.

Discharge on trial.

Officers of hospital exempted as jurors, &c.

34. Resident officers and other employees of the hospital, while actually engaged as such, shall be exempt from service as jurors and as county, district and township officers.

Entry on lands to lay pipes, &c.

35. In case the Commissioners of Public Charities shall hereafter require to re-enter and re-open lands where pipes are laid, the proprietors or occupiers shall be entitled to such compensation as may be agreed upon with such commissioners; and in case of no agreement being entered into, either party may proceed in such case in the same manner as directed by chapter 41 of the Acts of 1859, which shall be considered in force for that purpose.

Relations of patients to contribute towards maintenance.

36. The father, grandfather, mother, grandmother, children and grandchildren respectively of any pauper lunatic patient in the Nova Scotia Hospital for the Insane, being of sufficient ability, shall contribute towards the maintenance of such patient while in the hospital to such extent as their means will permit without injury to themselves or their families.

Appointment of committees, their duties.

37. The council of each municipality shall annually appoint not more than three committees of three persons in each municipality. Every such committee shall have power to inquire respecting the income and means of such father, grandfather, mother, grandmother, children or grandchildren, and to make an order on any of such parties requiring them to contribute towards the support and maintenance of such patient to such extent as the circumstances of the parties may warrant; and such committee shall summon the parties to be affected by such order to shew cause against the same, and shall hear such parties,

and thereupon may confirm, alter or modify such order. CHAP. 38.  
 Any party aggrieved by such order may within ten days after a copy of the order shall have been served upon him appeal to the supreme court or a judge thereof in the county; but such appeal shall not be allowed unless the appellant shall have served a notice in writing of such appeal on the clerk of the municipality within such ten days, and shall also within the same period have filed with such clerk of the municipality an affidavit sworn to before a justice of the peace setting forth the grounds of such appeal, which affidavit and notice the clerk of the municipality shall file with the prothonotary in the county where the order shall have been made on or before the first day of the next ensuing term of the supreme court in such county; and the supreme court shall hear and determine the matter in a summary manner, and the decision of the court shall be final.

38. The clerk of the municipality under the authority of the council shall sue for the amount payable by virtue of such order, in the same manner as if it were a private debt due himself; and the amount when recovered shall be paid into the treasury of the municipality.

Amounts recovered by suit paid into treasury of municipality.

39. Every such committee shall have power to alter or modify any such order, or to discharge therefrom the party affected thereby, if such party shall become so reduced in circumstances as not to be able to comply with the requirements of such order without injury to himself or his family.

Power of committee.

40. Every member of any such committee shall be entitled to receive the sum of one dollar and fifty cents for each day's necessary attendance on such committee, which sum shall be a municipal charge.

Payment of committee.

41. The municipality of Halifax may appoint as many justices as they may deem necessary, any two of whom shall have power, and whose duty it shall be, to receive and take the statement in Schedule A to this Chapter, and to take the examination under oath of the relatives or friends of the lunatic as to his place of settlement, and means and ability to pay for or contribute towards his maintenance in the Nova Scotia Hospital for the Insane, which examinations under oath shall be filed with the clerk of such municipality. Such two justices shall also possess the powers and discharge the duties of the committee mentioned in section 37, and shall make such arrangements for the support of any such lunatic as they may deem advisable, and shall take security for the carrying out of any such arrangement by bond or note

Two justices in Halifax to take statement in Schedule A., and examine relatives or friends of lunatic, &c.

CHAP. 38. to the treasurer of such municipality and his successor in office.

Such two justices alone to have power to commit.

42. Any two of such justices, having first taken such statement and examination, shall alone have the power of sending or committing any such lunatic to the Hospital for the Insane, and the commitment shall be signed by them before the lunatic shall be admitted to such hospital or become chargeable to the county of Halifax.

Commissioners shall petition for lands required.

43. Whenever the Commissioners of Public Charities shall require any or further lands for and in connection with the Nova Scotia Hospital for the Insane for any purpose whatever, they shall apply by petition to the supreme court or a judge thereof, which petition shall be accompanied by a plan of the lands required.

Proceedings on petition.

44. Upon the presentation of such petition to the court or a judge, an order *nisi* shall be granted calling upon all parties claiming any interest whatsoever in the lands applied for, either jointly or severally, to name an arbitrator; and copies of such rule shall be served upon the parties in possession of the lands applied for, and the same shall be published for a fortnight in one or more newspapers published in the City of Halifax; and such publication shall be considered as constructive service of

Order *nisi* published.

such rule or order *nisi* upon all persons interested who are unknown to the commissioners or upon whom personal service cannot be effected; and in case they shall not all agree in the naming of an arbitrator the court or a judge shall name one for them; and the Commissioners of Public Charities shall name one on their own behalf; and the court or a judge shall name the third arbitrator; and an order absolute shall thereupon pass appointing such arbitrators.

Arbitrators appointed.

45. The arbitrators shall be sworn before a commissioner of the supreme court to the faithful performance of their duty. They shall hear the parties and witnesses as regards the value of the lands applied for, and shall if they think proper examine the locality; and shall have power to call witnesses before them by subpoena under their hands, and to examine the parties and witnesses upon oath which they are hereby empowered to administer; and witnesses neglecting to attend shall be liable to the penalties to which witnesses are subject who neglect to attend after due notice before a judge or commissioner for taking evidence *de bene esse*, and such disobedience shall be punishable by a judge of the supreme court on the certificate of the arbitrators of the non-attendance of the witness.

Proceedings and powers of arbitrators.

46. The arbitrators shall fairly and truly estimate the value of the lands applied for by naming one sum for the whole or naming one sum for each lot of land applied for, as they may think proper in their award; and in case of disagreement two of the arbitrators may make the award; and the same shall be returned into the prothonotary's office at Halifax. CHAP. 38.  
Award.

47. The award shall not be set aside for any defect appearing therein, and the same shall be confirmed by the court or a judge, after due notice to all parties claiming any interest in such lands; but if the court or a judge shall be of opinion after hearing evidence on the point that the arbitrators have not allowed a sufficient amount for the lands so taken, then it may be referred back to such arbitrators; or the court or a judge may direct the appointment of other arbitrators in manner aforesaid, who shall proceed and make their award as hereinbefore directed. Award how dealt  
with.

48. When such award is confirmed by the court or a judge the Commissioner of Public Works and Mines shall pay the amount thereof into the supreme court; and upon such payment into court and the recording of the award and the order of confirmation in the office of the Registrar of Deeds for the County of Halifax, the title to the lands so applied for and set forth in the plan annexed to such petition shall vest absolutely in fee simple in the Commissioners of Public Charities. Title to lands,  
how vested in  
commissioners.

49. The supreme court or a judge shall direct the amount of such award to be paid to such party or parties as may be deemed entitled to the same and in such proportions as they may be deemed entitled to; and in case the title to such lands is in dispute then the supreme court or a judge shall make such order, or direct the trial of such issues before a jury, as may be deemed necessary for the purpose of determining the respective rights of the several parties to such lands. Disposal of  
amount of  
award.

50. In the construction of this Chapter, the terms "Hospital" and "Hospital for the Insane" shall be understood to mean the "Nova Scotia Hospital for the Insane;" the term "district" to mean a municipal district where a county is divided into separate municipalities; the term "county" to mean "county" or such "municipal district," and "supreme court" and "court" to mean a judge of the supreme court; unless such interpretation of any of such terms is precluded by the context.



## SCHEDULES.

## A.

*Statement to be forwarded to the Medical Superintendent when application is made for the reception of a patient.*

Some member of the family or acquaintance (assisted by the attending physician if practicable) should give a full and complete answer to each question—all facts thus given will be regarded as private or professional communication.

1. Name of patient (in full).
2. Where born.
3. Son (or daughter) of. Give names of parents and state that they are or are not blood relations.
4. Residence,                      County of                      .
5. Age                      , last birthday.
6. State as to marriage. Single, married or widowed.
7. Number and age of children. If female, give date of last childbirth.
8. Occupation (or that of father or husband).
9. Personal characteristics. Give any physical defects or peculiarities. Habits as a child and since then; disposition and tastes; success in business or condition of life. Has the patient any vicious habits or always led a regular life; is he addicted to the moderate or immoderate use of alcoholic beverages, or if a total abstainer.
10. Family history. Give all facts pertaining thereto—if any relations have been insane, hysterical, nervous, or have had fits, convulsions or syphilis, and whether on paternal or maternal side. Have either been addicted to intemperate use of stimulants or narcotics.
11. Education.
12. Religion.
13. Previous attacks. State if patient has ever had convulsions, fits, or any previous attack of insanity. The age at time of attack, its character, duration and treatment employed. If sent to an asylum, state where and the result of treatment. Give particulars of any subsequent attacks, if any.
14. Previous health. Has the patient ever had sunstroke or any injury of head, or any other serious injury or any serious disease, such as fevers, ague, syphilis, gout, rheumatism, consumption, or affections of lungs, heart, brain, kidney or other organ. Has patient ever been delirious, and if so give supposed cause.

15. Present attack. Give date of any change in the usual condition or habits, disposition or temper. What was the change? Has he been rash or speculative of late in business, or has he exaggerated notions of his ability, strength, power, &c. What has been done so far as regards care or treatment. CHAP. 38.

16. Assigned causes. Give supposed cause or causes, predisposing or remote, and the exciting or present cause.

17. Duration of present attack. Give date of its commencement.

18. Whether subject to epilepsy. State if subject has falling sickness or fits of any kind.

19. State as to sleep. Sleepless or restless at night?

20. Appetite for food. Natural, depraved, fastidious or absent.

21. If dangerous to others, how. Give full particulars. State every attempt to injure others. Was it from sudden passion or premeditation? Has the patient been subjected to mechanical restraint or confinement, and if so, where and in what form, and for how long a time?

22. If suicidal, in what manner? State whether attempted or threatened, and how often?

23. Present condition. Whether in usual health or feeble and emaciated, is the voice natural or is there hesitancy or stammering in speech? Is there any paralysis or loss of power of limbs? Is sight and hearing natural? Is patient excited or quiet, pleasant or moody and irritable? What is the occupation during the day or night? Is there failure in memory, or are his ideas exaggerated?

24. What delusions. Give their characteristics. Are there false impressions concerning the individuality or surroundings? Are the ideas connected, or is the mind continually wandering? Is a word dropped or forgotten in conversation, or misspelled or absent in his writing?

25. Present habits and propensities. Is the patient filthy in habits or language, or destructive of clothing, furniture or glass? Is there indulgence in secret vice, and if so, how long?

26. Pecuniary circumstances and to whom chargeable. Answer both questions.

27. Names and addresses of

I. Physicians.

II. Party giving the history.

III. Correspondent to whom letters may be addressed.

IV. Telegraphic address.

NOTE.—All letters of enquiry will receive a prompt reply. Severe illness or the occurrence of anything of moment will be immediately communicated. Stamps must be enclosed to prepay replies.

CHAP. 38. I, A. B., make oath and say that to the best of my knowledge the above particulars are correctly stated, and I hereby request you to receive the above named \_\_\_\_\_ whom I saw at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, (being within one month from this date), as a person of unsound mind, as a patient into the Nova Scotia Hospital for the Insane.

Sworn to before me, one of Her Majesty's justices of the peace for the county of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

J. P.

Name

Address

Degree of relationship (if any) or other circumstances of connection with the patient.

N. B.—If any of the particulars in this statement be not known, the fact to be so stated. No patient to be sent to hospital until a reply shall have been received to this statement.

\_\_\_\_\_

B.

*Certificate.*

I, the undersigned,<sup>a</sup> \_\_\_\_\_, being<sup>b</sup> \_\_\_\_\_ and in actual practice, hereby certify that I, on the \_\_\_\_\_ day of \_\_\_\_\_, 18—, at<sup>c</sup> \_\_\_\_\_ in the County of \_\_\_\_\_ separately from any other medical practitioner, personally examined<sup>d</sup> \_\_\_\_\_ of \_\_\_\_\_<sup>e</sup> \_\_\_\_\_<sup>f</sup> and that the said \_\_\_\_\_ is a person of unsound mind and a proper person to be taken charge of, and detained under care and treatment; and that I have formed this opinion on the following grounds, viz.:

1. Facts indicating insanity observed by myself :\*

1. Appearance.

2. Conduct.

3. Conversation.

(g) State the information, and from whom, 2. Facts indicating insanity communicated to me by others :<sup>g</sup>

Name

Place of residence

Date

\* The facts upon which (from personal observation) the opinion of insanity has been formed should always be specified.

N. B.—Two certificates (dated within one month of the commitment) are required in every case. The second should not be signed by the father, brother, son, partner, or assistant of the medical practitioner who has signed the first certificate. CHAP. 38.

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C.

County of

To any of the constables of the said County.

Whereas it appears to us, the undersigned justices of the peace, (or sheriff as the case may be), in and for the said county of \_\_\_\_\_, from the certificates of \_\_\_\_\_ and \_\_\_\_\_, both medical gentlemen in actual practice in said county, that \_\_\_\_\_ of \_\_\_\_\_ is of unsound mind, and is a proper person to be taken in charge and detained under care and treatment.

These are therefore to command you, the said constable, to take the said \_\_\_\_\_ and \_\_\_\_\_ safely convey to the Provincial Hospital for the Insane and there deliver \_\_\_\_\_ into the custody of the medical superintendent thereof or other person in charge.

And we do hereby request you, the said superintendent of the aforesaid Hospital for the Insane, to receive and place under medical treatment the said \_\_\_\_\_, until released in the usual manner.

Given under our hands and seals at \_\_\_\_\_ in the county of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, A. D. \_\_\_\_\_.

CHAP. 39.

## TITLE XI.

## OF AGRICULTURE.

## CHAPTER 39.

## OF THE ENCOURAGEMENT OF AGRICULTURE.

Appointment of  
Central Board of  
Agriculture.

1. The Governor-in-Council shall annually appoint a Central Board of Agriculture, consisting of seven persons, of whom one shall be selected from among the members of the Executive Government of the Province, and the remaining six shall be selected from the six districts mentioned in Schedule B in the manner hereinafter provided. Five of such board shall be a quorum, and they shall be a body corporate under the name of the "Central Board of Agriculture."

Nominations for  
central board,  
how made.

2. It shall be the duty of the officers of every agricultural society immediately after their election at the annual meeting in December to nominate one person suitable for appointment to the central board; and the secretary of every society shall forthwith transmit to the secretary of the central board the name and address of the person so nominated.

Name, &c., to be  
transmitted to  
secretary.

Governor-in-  
Council to select  
members.

3. The Governor-in-Council shall select six from among the persons so nominated to be members of the central board, one being chosen from each of the districts specified in Schedule B, and the preference being given for each district to the person nominated by the greatest number of societies. In case of an equality of votes for any number of the persons so nominated for any district, the Governor-in-Council shall determine who of the number shall be the member.

In case of neg-  
lect to nomi-  
nate, &c., mem-  
ber to be ap-  
pointed.

4. In case the officers of the agricultural societies for any district shall neglect or refuse to nominate any person for appointment to the central board, or if the secretaries of the societies shall transmit no such name and address, the Governor-in-Council shall appoint a member of such central board for such district.

Members to re-  
tire annually.

5. All members of the board shall retire annually on the thirty-first day of January; but shall be eligible for re-appointment.

6. When vacancies occur in the board from other causes than the annual retirement of members on the thirty-first day of January, the Governor-in-Council may at once appoint new members without reference to nominations by societies.

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Vacancies in board, how filled.

7. The first meeting of the board shall be held at such time and place as the Governor-in-Council shall direct, when they shall elect a president, vice-president, secretary and treasurer.

First meeting, when held.

Election of officers.

8. There shall be held in each year at least one general meeting of the board, which shall take place at Halifax in the month of March during the sitting of the Legislature, and of which at least ten days' notice shall be given. Special meetings may be called by the secretary at the instance of the president or upon the written request of three members, and may be held at such times and places as the president or such three members shall determine.

General meeting to be held in Halifax.

Special meetings may be called by secretary.

9. The board shall not pay or allow any sum to a member thereof for acting as such member, except the amount of his actual hotel expenses and necessary travelling expenses in attending its regular meetings, which shall not in any case exceed six cents a mile for the distance actually travelled in going to and returning from such meetings.

Members to receive only actual expenses.

10. It shall be the duty of the Board—

Duties of board.

I. To take measures for the formation of county or district societies and for infusing new vigor and efficiency into those already in existence.

To form county societies.

II. To receive the accounts and reports of such societies, and before granting the certificates hereinafter mentioned to entitle them to participate in the provincial grant to see that they have complied with the provisions of this Chapter.

To receive reports.

III. To publish a monthly journal for the diffusion of agricultural and horticultural information adapted to the condition and circumstances of the country, and to cause the same to be distributed as generally as possible.

To publish and distribute journal.

IV. To take measures to obtain from other countries animals of new or improved breeds, new varieties of grains, seeds, vegetables, plants or other agricultural productions for general and equitable distribution throughout the several counties; and to adopt every measure in their power generally to promote improvement in the agriculture and horticulture of the Province.

To obtain new stock, grain, &c., for distribution.

11. The board may at any time appoint a person to inspect the books and accounts of any society in the Province receiving government aid in connection with agriculture; and all officers of every such society whenever required so to do shall submit its books and accounts to such

Board to appoint inspectors of societies.

**CHAP. 39.** inspection, and truly to the best of their knowledge answer all questions put to them in relation thereto or to the funds of the society.

Board entitled to draw certain sum of money; application thereof and accounts.

12. For the purposes of this Chapter the board shall be entitled to draw from the Provincial Treasury annually such sum not exceeding eight thousand dollars as the Governor-in-Council may authorize, out of which they may expend a sum not exceeding nine hundred dollars for the salary or salaries of the secretary and treasurer of the board, and a further sum not exceeding one hundred dollars for stationery and other incidental expenses; and they shall exhibit to the Government, for the information of the Legislature, every year an account of the expenditure of the same, with proper vouchers, and a full report of their proceedings.

Agricultural societies; how organized.

13. Agricultural societies may be organized in any county or two adjoining counties wherever forty persons or more shall become members thereof by signing a declaration in the form of Schedule A to this Chapter, and paying each not less than one dollar annually to the funds thereof. A true copy of such declaration shall within one month after the money has been so paid be transmitted to the secretary of the central board.

Subscription.

When so organized entitled to draw from treasury double amount of subscriptions.

14. When any society shall be so organized, such society shall be entitled to draw annually from the board by warrant in favor of its president and on the certificate of the secretary of the central board not more than double the amount of the subscriptions so raised and paid; the payment of such subscriptions to be certified upon oath by the secretary or treasurer of the society; but no county or border society shall be entitled to draw more than two hundred and fifty dollars in any one year.

Not to exceed \$250 per annum.

Government allowance; how apportioned.

15. In counties where more than one agricultural society exists the Provincial allowance shall be given on the principle in section fourteen, not exceeding for any county the sum of four hundred dollars in any one year; and the same shall be apportioned among such societies by the central board in a ratable proportion to the amount of the subscriptions raised and paid by each society for the year in which such allowance shall be claimed; but no society shall draw more than two hundred and fifty dollars.

Of societies organized previous to 1875.

16. All agricultural societies organized previous to or during the year one thousand eight hundred and seventy-five, recognized by the Central Board of Agriculture, and the names of which are included in the annual report to the Legislature of such board for such year, shall be deemed to be organized, under this Chapter, and shall be entitled, on complying with the requirements of such Chapter, to draw

their respective proportions of the annual provincial allowance under the fourteenth or fifteenth section thereof. CHAP. 39.

17. Societies subsequently formed, or societies that may be hereafter formed, under the thirteenth section of this Chapter, shall not be deemed organized under such Chapter, unless or until they have been formally sanctioned and recognized by the Central Board of Agriculture; and societies that have not been in active operation, with the returns required by such section forwarded to the secretary of the board, before the first day of July of any year, shall not be entitled to draw any portion of the provincial allowance until the following year. Of societies subsequently formed, &c.

18. Any new society, having forwarded the declaration required by such thirteenth section before the first day of July in any year, shall, on being sanctioned or recognized by the board at their first meeting thereafter, draw its share of the yearly provincial allowance under the fourteenth or the fifteenth section. New societies to draw yearly allowance.

19. An attested list of the members of the society whose annual subscription fees have been paid, together with a certified statement of the year's accounts and report as presented to the annual meeting under the twenty-second section of such Chapter, shall be forwarded by the president or secretary of each society to the secretary of the board not later than the thirty-first day of December in each year, and societies failing to comply with the provisions of this section shall forfeit their claim to any share of the provincial allowance to societies for the year then ended. Attested list of members of society.

20. In case of any difficulties arising as to the boundaries of any such societies, the central board shall define the same. Boundaries, how defined.

21. The objects of such agricultural societies shall be to encourage and promote the introduction of improved stock, seeds, fruit, roots, implements, methods of culture, drainage, orchard cultivation, and improvement in farm buildings and domestic manufactures; to hold shows and exhibitions; to award premiums for excellence, and to diffuse information concerning agriculture and horticulture. The funds of such societies, derived from the subscriptions of members or the public grant, shall not be expended for any object inconsistent with those above mentioned. Objects of agricultural societies

22. The annual meetings of the societies shall be held on the first Tuesday of December in each year, when they shall each elect a president, vice-president, secretary and treasurer, and not more than five directors. Annual meetings of societies.

23. The officers appointed at the formation of such societies shall, until the election of their successors at the First officers to continue until successors appointed.



CHAP. 39. annual meeting, exercise all the powers vested in the societies by this Chapter.

Special meetings. 24. They shall hold special meetings pursuant to adjournment or on written notice from the secretary, which shall be given one week before the day appointed for any such meeting, and at any such meeting five shall be a quorum.

May alter by-laws, &c. 25. The said officers and directors may at any such meeting make, alter and repeal by-laws and rules for the management of such society, copies of which shall within one month thereafter be forwarded to the secretary of the central board for its approval.

Annual report, when presented. 26. Such officers and directors shall, in addition to the ordinary duties of management, present at the annual meeting in December a report of the proceedings of the society during the year, in which shall be stated the names of all the members of the society, the amount paid by each, the names of all persons to whom premiums were awarded, with the name of the animal, article or thing in respect of which the same was granted, together with such remarks upon the agriculture of the county as they may be enabled to offer and a statement of the receipts and disbursements of the society during the year; which report and statement if approved by the meeting shall be entered in the journal of the society; and a true copy thereof, certified by the president and secretary to be correct, shall be sent to the central board within one month thereafter.

County societies to hold annual show. 27. The county society where but one exists in a county, and the several societies where more than one are established therein, shall be requested to hold an annual show for the exhibition of agricultural and horticultural produce, farm stock and articles of domestic manufacture; at which prizes shall be granted for the best specimens produced: and such shows shall be held at such times and places and under such regulations as the majority of the officers and directors of the several county societies may determine.

Other system may be adopted in place of show. 28. If the officers and directors of the agricultural society of any county or part of a county consider that any other system might advantageously be substituted for that of shows, and that the sum allotted to such society might be better applied to the importation of stock or to any other purpose for the improvement of agriculture; in such case they may so apply the said sum, provided notice thereof has been given to the Board of Agriculture and its approval of such appropriation obtained.

Annual grant for exhibitions. 29. The Central Board of Agriculture shall be authorized to draw from the Provincial Treasury every year the sum

of four thousand dollars for agricultural and industrial exhibitions, to be held every year alternately in the following manner, namely:—(1) Agricultural and Industrial Exhibitions to be held in any county in the Province selected by the central board, and to be called Provincial Exhibitions. (2) Agricultural and Industrial Exhibitions to be held respectively in any one of the counties of each district into which the Province is now or hereafter may be divided, selected by the central board, and to be called District Exhibitions. The said sum of four thousand dollars shall be paid by the central board to any agricultural society or other responsible body as a prize fund every alternate year, as above provided, for the purpose of the Provincial Exhibition, and every other year to similar societies or bodies within each agricultural district, as a prize fund for district exhibitions respectively in proportion to the number of counties embraced in each such district. Such exhibitions shall be carried out and all the expenses thereof borne by such societies or bodies, under such rules as the board may from time to time prescribe, and the prize list for such exhibition shall be made up under the direction and subject to the approval of the Board and of the Governor-in-Council.

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SCHEDULES.

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A.

We, whose names are hereunto subscribed, agree to form ourselves into a society under the provisions of the Chapter of the Revised Statutes, "Of the Encouragement of Agriculture," to be named the \_\_\_\_\_ Agricultural Society in the County of \_\_\_\_\_; and we severally agree to pay to the treasurer of the said society towards the funds thereof annually the sums set opposite our respective names.

Names of Subscribers.	Sums Subscribed.
A. B.	\$
C. D.	

CHAP. 40.

## B.

District number One shall include the counties of Halifax and Lunenburg.

District number Two shall include the counties of Kings, Annapolis and Queens.

District number Three shall include the counties of Digby, Shelburne and Yarmouth.

District number Four shall include the counties of Hants, Colchester and Cumberland.

District number Five shall include the counties of Pictou, Antigonish and Guysborough.

District number Six shall include the counties of Cape Breton, Richmond, Inverness and Victoria.

## CHAPTER 40.

## OF AGRICULTURAL AND LAND CORPORATIONS.

Agricultural corporations, how organized.

1. Whenever twenty persons or more shall raise forty dollars per annum or upwards to be applied for the improvement of agriculture, they shall thereupon become a corporate body by such name as they shall think fit with all the privileges and obligations in the Chapter "Of General Provisions respecting Corporations": but such privileges shall continue only so long as there are twenty members or more in the society, and as they shall annually raise the sum of forty dollars at the least, and apply it for the improvement of local agriculture.

Formation of an association for the improvement of lands.

2. Whenever any British subjects desire to form an association for the purchase and improvement of crown lands on the lines of the trunk line of railroad from Halifax to Quebec, they may transmit the names of such persons, not less than twenty, as they wish to represent them to the commissioner of lands and emigration, to be transmitted to the Lieutenant-Governor of this Province, who shall thereupon if, with the advice of council, it be determined to invest such persons with corporate powers, direct their names to be inserted in the *Royal Gazette* and a patent to issue clothing such persons and their co-partners with the privileges and legal liabilities of a corporation, upon the following terms, subject to such restrictions as may by the Governor-in-Council be deemed necessary:

Privileges, liabilities and restrictions of the company.

*First.*—The name of the company and the names of its directors to be lodged in the office of the Provincial Secretary, with an impression of its common seal.

*Second.*—The directors to be liable to the whole extent of their fortunes for the debts of the company, being vested with power to sue and be sued in their corporate capacity. CHAP. 40.

*Third.*—The shareholders to be liable only to the extent of their shares.

*Fourth.*—The company to purchase fifty thousand acres of crown lands on the line of railroad at such price as may be determined upon by the Governor-in-Council, with power to purchase any further quantity when one-half of the original purchase has been sold and settled.

*Fifth.*—The lands to be laid off in lots of one hundred acres at the expense of the Government, and numbered on the plans from one to five hundred, it being provided in the general grant that every lot on which there is not a dwelling house actually occupied and at least five acres of land cleared and improved at the end of ten years from the date of its purchase, shall revert to the Crown and become a part of the public domain, upon a declaration of the Governor-in-Council to that effect, without office found.

*Sixth.*—Where the lands purchased are in one block, and are not included in any township, they shall be formed into a township; and the inhabitants whenever they shall number one hundred heads of families shall be invested by law with all the privileges of township organization.

*Seventh.*—The capital of the company shall be limited to two hundred thousand dollars, but may be increased by four dollars for every acre of land purchased from the Provincial Government above the quantity specified in the fourth condition.

3. The company shall have power over such lands as they shall purchase, over mines not subject to legal reservations, over the standing timber, mill sites and water privileges; and may lay off and sell such lands in town lots or blocks of less or more than one hundred acres at their option, and for the general advantage. Power of company over land.

4. The company may enter into contracts with any commissioners appointed to construct so much of the railway as will run through the lands purchased, and to work and repair such railway after it is made; but no greater amount shall be charged for the construction and working of such sections of the railway than is paid for constructing and working other portions of the line. Company may contract for railways running through their lands.

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## CHAPTER 41.

## OF FARMERS' CLUBS.

- Bureau of Agriculture. 1. The Central Board of Agriculture for the purposes of this Chapter shall be called the "Bureau of Agriculture," to be governed and controlled as at present constituted.
- Bureau of Agriculture may establish "Farmers' Clubs." 2. The Bureau of Agriculture may establish one or more societies in the different counties of Nova Scotia to be called "Farmers' Clubs," for the purpose of mutual agricultural and horticultural improvement.
- Notice of formation of "Farmers' Clubs." 3. Any number of persons not less than fifteen may organize and form themselves into a Farmers' Club for any county or district in a county, by signing a declaration in the form in the schedule to this Chapter, to be addressed to the Bureau of Agriculture. Such declaration shall be in duplicate signed by the persons aforesaid, one part thereof to be held and filed with the secretary after his election, and the other to be filed with the secretary of the Bureau of Agriculture.
- Election of officers. 4. The officers of the club so formed shall be a president, vice-president, secretary and treasurer, to be elected by a majority of the club, who with one other member to be chosen, shall constitute a standing committee. All such officers shall be elected annually.
- Fee for membership. 5. The fee for membership shall be two dollars a year.
- Club to keep record, prepare statistics, and to publish reports, &c. 6. It shall be the duty of such clubs to keep a record of their respective transactions, to prepare statistics in all the branches of agricultural and horticultural industry in their several counties, and to publish in such manner and form as to secure the widest circulation in the Province among the clubs and agricultural societies and farmers generally, all such reports, essays, lectures and other useful information as such clubs may respectively procure and adjudge suitable for publication.
- Bureau of Agriculture to prepare papers for clubs. 7. The Bureau of Agriculture shall from time to time prepare papers for the consideration of the clubs, to embrace among others the following subjects: drainage; the best fertilizers and manner of application; the improvement of dyked; marsh and swamped lands; rotation of crops; lands best adapted for cereals; grain crops in their various departments; horticulture, and the improvement of stock; together with such other matters as may from

time to time in the judgment of the Bureau be considered CHAP. 41.  
necessary.

8. Any club formed under this Chapter having funds <sup>Prizes for essays, &c.</sup> at its disposal may offer prizes or premiums in the county for essays on questions of scientific inquiry relating to agriculture or horticulture; on the raising or improvement of stock, and the breed of horses, sheep and swine; the invention or improvement of agricultural or horticultural implements and machines; the production of grain, cereals, plants, flowers and fruits, and generally for excellence in any branch of agricultural, horticultural, or floral industry.

9. Such subjects shall be discussed at the different <sup>Results of discussions transmitted to Bureau</sup> clubs, and the results arrived at shall be transmitted by the secretaries to the Bureau of Agriculture.

10. The Bureau of Agriculture shall annually epitomize <sup>Publication of results of discussions.</sup> the results arrived at in the various discussions before the clubs, and cause the same to be published for general sale and distribution.

11. The clubs shall meet semi-annually, or oftener. <sup>Rules and regulations.</sup> Their proceedings and debates shall be conducted under such rules and regulations as the Bureau of Agriculture may prescribe.

12. Every club established under this Chapter shall be <sup>Clubs to be bodies corporate.</sup> a body corporate, under such name as may be selected by a majority of the club; and such name shall be reported by the secretary to the secretary of the Bureau.

13. There shall be allowed for the purposes of this <sup>\$400 allowance.</sup> Chapter out of the agricultural grant from the Provincial treasury the sum of four hundred dollars, to be under the control of the Bureau of Agriculture.

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#### SCHEDULE.

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We, the undersigned residents of the county (or district) of \_\_\_\_\_, hereby undertake and agree to form ourselves into a Farmers' Club for such county (or district), under the provisions of Chapter 41 of the Revised Statutes.

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## CHAPTER 42.

## OF COMMISSIONERS OF SEWERS, AND OF DYKED AND MARSH LANDS.

Commissions to continue in force

1. All commissions issued for the appointment of commissioners of sewers shall continue in force till the Governor-in-Council shall otherwise direct.

Commissioners, how appointed and sworn in; clerk to be appointed and sworn.

2. The Governor-in-Council at the request of any of the proprietors of any marsh, swamp or meadow lands may appoint one or more commissioners of sewers for the county, township or place where such lands lie, who shall be sworn into office by a justice of the peace, and such oath shall be endorsed on said commission and certified by the justice administering the same, and such commission with such certificate endorsed shall be received in evidence without further proof in any court in this Province, and such swearing shall be entered in the commissioners' book of record; and the commissioners shall appoint a clerk who shall be sworn into office by one of the commissioners, and the swearing shall be entered in the book of record, which shall be evidence of the fact.

Commissioners, how chosen to carry on work; how dismissed.

3. Two-thirds in interest of the proprietors of any marsh, swamp or meadow lands within the jurisdiction of such commissioners may by themselves or their agents select one or more commissioners to carry on any work for reclaiming such lands; and they may at any time add to or diminish the number of commissioners selected, or supersede any or all of them, and choose others instead; and the choice or dismissal of any commissioners for or from the management of any particular land shall be made in writing under the hands of two-thirds of the proprietors in interest in such lands, and shall be entered in the book of record or filed by the clerk. Whenever any marsh, swamp or meadow lands lie partly in two counties, one or more commissioners of sewers may be chosen therefor out of one or both counties in which such lands lie.

Powers of commissioners for carrying on works; new works, how begun.

4. The commissioners so chosen may require the proprietors of such lands to furnish men, teams, tools and materials to build or repair any dykes or weirs necessary to prevent inundation, to dam, flow or drain such lands, or to secure the same from brooks, rivers, or the sea, by aboiteaux or breakwaters, or in any way they may think proper, or for the erection of fences to protect the same; and in case of neglect may employ men and teams and provide tools and materials for that purpose at the expense

of such proprietors. The commissioner so chosen shall CHAP. 42. consult such other commissioners within the township, county or place as two-thirds in interest of the proprietors of the lands in question personally or by their agents shall name, as to the practicability of the work or anything relating to the same. In case of the commencement of any new work two-thirds in interest of the proprietors of the lands shall first agree thereto.

5. Commissioners may appoint from among the pro-<sup>Overseers may be appointed; how sworn.</sup> prietors of such lands one or more overseers to assist them, who shall be sworn by one of the commissioners.

6. Commissioners shall in ordinary cases cause three <sup>Notice to be given to proprietors.</sup> days' notice, exclusive of Sundays, to be given to the proprietors of land or to their known agents when they reside within six miles of the place where the labor is required to be done, to attend and furnish labor and materials; but in case of sudden breaches in any works or apprehension thereof, the immediate attendance of each proprietor may be required, or if the repairs needed are not extensive and the attendance of all the proprietors would involve unnecessary expense, the commissioners may employ men and teams and furnish tools and materials at the expense of the proprietors, as provided in section four of this Chapter as to cases of neglect.

7. The commissioners so chosen may assess the owners <sup>Assessment to be made, and for what purpose.</sup> or occupiers of such lands for any expenses incurred by them or their predecessors whose accounts remain unsettled, for dykes, wears, drains, aboteaux, breakwaters or fences, including a sum not less than two nor more than three dollars per day for every commissioner while actually employed and a reasonable sum for the payment of the clerk, overseers and collector, having regard to the quantity and quality of land of each owner or occupier, and the benefit to be by him received. <sup>Interest may be collected, &c.</sup> And it shall be lawful to assess and collect interest on any monies necessarily laid out and expended by the commissioners in repairing dykes, or in carrying on any works or undertakings for the benefit of or in connection with any body of marsh under the charge of such commissioners.

8. Where any rate shall exceed one dollar and fifty <sup>Rates exceeding one dollar and fifty cents per acre, how assessed.</sup> cents an acre on the whole quantity of ratable land, the commissioners shall summon the owners or occupiers of such land, or their known agents, or such of them as shall reside within ten (or in the County of Kings six) miles of the work, to meet at a certain place and at a certain time, not less than three days exclusive of Sunday, after service of such summons; when two-thirds in interest of the owners or occupiers present may elect not less than three



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nor more than five disinterested persons as assessors who shall be sworn into office in the same way as the clerk; and they or a majority of them shall with the commissioners assess the owners or occupiers for the expenses incurred, including a sum not exceeding one dollar and fifty cents a day for each assessor while actually employed.

Commissioners of Wickwire dykes may assess.

9. The commissioners for the new or Wickwire dykes in Horton may assess the owners or occupiers of land in such dyke, although the rate shall exceed one dollar and fifty cents an acre, provided the rate shall not exceed four dollars an acre on the whole quantity of ratable land, without calling a meeting of the owners or occupiers as provided in the last section, or taking the other proceedings prescribed by this Chapter where the rate exceeds one dollar and fifty cents.

Meadow and swamp lands assessed for original drainage.

10. An assessment may be made in the same way in respect of meadow lands and swamps for the original opening, draining or fencing thereof, although the rate be less than one dollar and fifty cents an acre on the quantity of ratable land.

Assessment when agreed to unanimously; valid as other rates.

11. If the owners or occupiers or their agents, attending such meeting shall unanimously agree to an estimate and assessment in writing to be entered in the books of the commissioners, it shall be valid and binding as any other rate or assessment.

Fines, rates, and assessments, how recovered.

12. All fines, rates and assessments shall be recovered by and in the names of the commissioners so appointed and chosen with costs as if the same were private debts; and a copy of the assessment, or of such part as may relate to the particular rate sued for, shall be sufficient proof of the assessment having been made, and of the liability of the owner or occupier of the land in question to pay the same; and the assessment shall continue to be a lien upon the land, although the same shall have been sold and conveyed; and no fine, rate or assessment shall be subject to any set-off of a private nature, or be connected with any private claim on the part of the plaintiff.

Private set-off disallowed.

Lands may be leased for payment of rates.

13. When no goods of any owner or occupier of such lands can be found within the county where they lie, or the commissioners shall not think prudent to proceed under any judgment so obtained against such goods, the commissioners may let so much of the land as will pay the rate and expenses thereon, first giving twenty days notice by handbills posted in at least three of the most public places in the township where the lands lie.

May be sold if rents not sufficient.

14. If any such lands cannot be let for a sufficient sum to pay the rate and expenses, the sheriff or his deputy at the request of the commissioners shall sell the same, or so

much thereof as is necessary to pay the rate and expenses, CHAP. 42. having given three months' previous notice of the time and place of such sale by handbills posted in at least three of the most public places in the township where such lands lie; and shall execute and deliver to the purchaser a valid deed of such lands, for which deed, and his attention about the sale, he shall be entitled out of the proceeds to two dollars. A recital in the deed of such handbills having been duly posted shall be presumptive evidence of the fact. No school or glebe lands shall be sold under this Chapter.

15. Where the present or former owner or occupier of any land, or his known agent, shall not have agreed to the building of any dyke, wear, aboiteau or breakwater, or to the damming, flowing or draining of such land, the land only shall be liable for the rate or assessment. Land only liable where owner has not agreed to works.

16. Any deficiency in the amount of a rate may be levied and collected as an original rate. Deficiencies, how collected.

17. No commissioner shall be liable to an action for any demand for work or materials furnished by the owner or occupier or his agent, until all rates and expenses thereon against the lands of such owner or occupier shall have been paid, nor until after a reasonable time for making up the rate bill and collecting the same; and before any letting or sale shall take place the amount due to the owner or occupier of such lands for work or materials shall be deducted from the amount due from such owner or occupier. When commissioner liable to action.

18. Every owner or occupier of such lands or his agent shall, when required by the commissioners, provide at a certain time and place named a sufficient number of laborers with tools, carts and teams in proportion to the quantity of land owned or occupied; and for each day's neglect in case of a sudden breach, or the apprehension of one, shall pay besides his rate or assessment a fine of one dollar for each laborer, and a like sum for each cart or team so required. All fines when recovered shall be applied for the benefit of such lands generally. Owners and occupiers to furnish labor. Fine for neglect.

19. When sods or soil shall be cut off the land of any proprietor inside or outside of the dyke for the purpose of making or repairing such dyke, or when such lands shall be washed away or dyked out, or injured by carting over the same by order of the commissioners, such damage shall be valued, assessed and paid as other dyke rates. If there be any lands so reclaimed lying undivided and in common, the same shall be, as far as it may be available, allotted to the party injured, and the balance only, if any, assessed as above. Damages for sods or soil, how assessed.

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Powers of com-  
missioners.

20. When sods or soil shall be cut off the lands of any proprietor inside or outside the dyke for the purpose of making and repairing such dyke or an aboiteau, the commissioners shall have power to settle the value of the same with the owner or owners of the land, provided the damage does not exceed five dollars for each person; and if the commissioners and owners cannot agree, each party shall choose one freeholder as appraiser, and such two appraisers shall appoint a third freeholder to act with them, and the decision of any two of such freeholders shall be final; and if the appraisers so appointed do not allow one-sixth more than had been offered by the commissioners, the owners shall pay all the expenses consequent upon such appraisement.

Clerk to keep  
record.

21. The clerk of the commissioners shall keep a record of all their proceedings and a fair account of all moneys expended by them, open to the inspection of all persons interested therein on payment for each search and examination of the book at one time of twenty cents; and a copy shall be furnished to every person interested when demanded on payment of ten cents for every ninety words.

Salt marsh, when  
taxed.

22. Whenever by the making or repairing of a breakwater by direction of a commissioner of sewers, salt marsh lying inside or outside the same shall be benefited thereby, the same shall be taxed and assessed towards the expense of the breakwater in proportion to the benefit derived.

Expense assessed  
on parts bene-  
fited.

23. Whenever in the draining of any swamp or meadow land a part shall be benefited, the proportion of the expense shall be assessed on that part only.

Competency of  
clerks and other  
officers as wit-  
nesses.

24. A clerk or overseer or collector shall be a competent witness to prove any fact connected with the duties of his office, although a proprietor in the land included in the assessment; except in a matter touching the particular rate or assessment upon his own land or upon himself in relation thereto.

Commissioner  
shall not be  
clerk.

25. No commissioner of sewers shall hold the office of clerk or collector.

Plans when  
necessary, how  
obtained.

26. When any commissioner of sewers having the charge of any land shall think it necessary to have a plan thereof shewing the several lots and boundaries and the names of owners or occupiers, he may employ a surveyor to make such plan, and order the expense to be laid on the land so surveyed as other charges, and may require the owners or occupiers or their agents to point out to the surveyor the boundaries of their respective lots; and the owners, occupiers and agents so called upon shall be bound by such survey and plan.

27. Where any lands enclosed by dykes shall, by other CHAP. 42. dykes erected outside the same, be enclosed and protected, the commissioner in charge of the lands reclaimed by outer dykes shall call a meeting of the proprietors of the land within the whole level contained and enclosed by such outer dykes, who shall reside within the township or within ten (or in the county of Kings six) miles of the place where such lands lie, giving six days' notice of the time and place of meeting to each proprietor or his known agent; and two thirds in interest of such owners or occupiers present, or in case of their neglect, the commissioners shall elect not less than three nor more than five disinterested freeholders, who being sworn before a justice shall determine what proportion or degree of benefit has accrued or is likely to accrue to the old or inner dykes and the lands lying within the same from the new or outer dykes, and shall settle and declare the proportion of expense the proprietors of the lands within the old dykes ought annually to contribute and be assessed towards the maintenance and repair of the new dykes; and such persons, or two-thirds of them, shall make a report in writing of their proceedings, which shall be entered in the book of record for such outer dykes; and every sum or proportion of expenses so settled and declared shall be borne upon the lands within the inner dykes, and be assessed and collected as other dyke rates.

Outer dykes protecting lands enclosed by inner dykes, how kept in repair.

28. If such outer dykes shall at any time cease in whole or in part to protect such inner dykes, the lands within the inner dykes shall not for such time contribute or be assessed to the support or repair of the outer dykes.

Outer dykes ceasing to protect inner dykes.

29. If at any time two thirds in interest of the proprietors of the lands within the inner dykes shall be apprehensive that the outer dykes are unsafe or out of repair, two thirds in interest of the proprietors of the whole level may call upon one or more commissioners to examine the outer dykes; and if such dykes appear to require repair, he or they with the assent of such two thirds in interest of the proprietors of the whole level shall forthwith cause the same to be repaired, or otherwise with the like consent put the inner dykes in a state of repair as shall seem most advisable. If the inner dykes be repaired then the proprietors of the lands enclosed thereby shall bear the expense.

Proprietors interested in inner dykes may take proceedings to compel repairs of outer dykes.

30. If any person shall pasture marshes or other lands enclosed by a common dyke or without and adjoining such dyke, or shall make a road over such dyke whereby it shall be injured, the commissioners may make an order on such person as often as occasion may require for repairing

Dyke injured by pasturage or roads, how repaired.

CHAP. 42. the injury by a certain day to be named therein; and in case of refusal of obedience to such order the commissioners shall cause the injury to be repaired; and the person disobeying the order shall forfeit for every offence two dollars, which with the costs of the repair may be recovered and applied as other dyke rates.

Cases of two proprietors, neither owning two thirds, how provided for.

31. On application by any proprietor of marsh, swamp or meadow lands in writing, signed by him or his agent, to the commissioners for the county or township in which the lands lie, or in case there have been a commissioner or commissioners selected by two thirds in interest for carrying on work over the lands whereof the same form a part, then to such commissioner or commissioners, setting forth that the same are frequently overflowed and rendered unproductive; the commissioners or any three of them, or the commissioner or commissioners so selected as the case may be, shall inquire into the merits of the application, and may direct such lands to be drained by causing new or old drains to be opened through the same or any adjacent land, and such commissioner or commissioners may order such measures as they may deem proper for rendering the lands productive, and may require the proprietors or occupiers of the lands through which the drainage shall be ordered to perform a just proportion of the labor necessary for the purpose, and shall have power to tax all lands benefited by such drainage and the proprietors or occupiers thereof for the expenses incurred, and for damage arising therefrom, in proportion to the benefit to be received by such lands respectively, by a rate according to the quantity and quality of the lands owned by the proprietors respectively, which rate shall be levied and recovered as other dyke rates are, but no such rate shall be payable until ten days after notice given by the commissioner or commissioners, or his or their collector or clerk, to the proprietors or occupiers, or their known agents respectively, residing within ten (or in the County of Kings six) miles of the lands drained of the amount thereof, or in case of an appeal, until after the decision thereon.

Making, altering, &c., roads, &c., through dyked lands.

32. Two thirds in interest of the proprietors of any body of marsh, dyked or undyked, may on application in writing specially require the commissioners of sewers having such land in charge, or in case there be none, may select any other commissioner for the purpose of making, repairing or altering any private roads or bridges leading through or across the same, which such majority of two thirds in interest may deem expedient or advantageous, and the commissioners so appointed or required may call upon the proprietors of such lands to furnish men, teams,

tools and materials to carry on such works and may assess CHAP. 42.  
 the owners or occupiers of such lands according to the benefit to be derived, and collect such rates in the same way as ordinary dyke rates.

33. On application in writing two thirds in interest of the proprietors of any part or portion of any dyked marsh or meadow land, desiring to flow the same, may direct the commissioners in whose jurisdiction such lands may lie, or in case there is none, any commissioner selected by themselves from the same county or town, to proceed immediately and set off such part or portion into a separate body and dyke out such part or portion for the purpose of flowing the same, and such commissioner may require the proprietors or occupiers of such lands to furnish their proportions of labor and materials necessary to erect a division dyke for that purpose, and shall assess them for the expenses and damages thereof according to the benefit to be received by such flowing: provided always, that whenever it shall appear to any commissioner of sewers adjoining such flowed lands that such division dyke is insufficient, and such lands adjoining are endangered thereby, it shall be lawful for such commissioner to repair such division dyke and collect the expenses thereof from the proprietors of land so dyked out.

34. The expenses of repairing the dyke cut for such flowing shall be borne by the proprietors of the land so dyked out and flowed.

35. If not less than one third in interest of the proprietors or occupiers taxed shall within seven days after being notified thereof give notice to the commissioner or commissioners in writing, signed by themselves or their respective agents, that they are dissatisfied with the rate, such commissioner or commissioners shall summon the owners or occupiers of such lands or their known agents or such of them as shall reside within ten miles (or in the county of Kings six miles) of the work to meet at a certain place and on a certain day, being at least three days exclusive of Sunday after service of such summons; when a majority in interest of those present shall elect not less than three or more than five disinterested persons as assessors; and the assessors or a majority of them, having been first sworn into office in the same way as the clerk, with such commissioner or commissioners, shall assess such owners or occupiers for the expenses incurred, including a sum not exceeding one dollar and fifty cents a day for each assessor while actually employed, and the decision of the assessors or any three of them shall be final.

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Mode of procedure where last section not complied with.

36. In case the proprietors neglect to meet at the time and place appointed or to appoint assessors, or in case the assessors or a majority of them neglect to perform the duties imposed upon them, the commissioner or commissioners shall forthwith submit and refer such rate to three other disinterested commissioners of sewers of the county or township within which the lands lie, by name; who shall forthwith revise, and, if they see fit, amend such rate, and the decision of the revising commissioners or any two of them shall be final.

Damages to land of persons not applicants, how valued and assessed.

37. When the land of any proprietor within such marsh, swamp or meadow land, other than that of the applicant, shall have been injured by such drainage or other measures ordered, the damage shall be valued, assessed and paid in the same manner as directed for the expenses incurred in such drainage.

Cases of two proprietors, neither owning two-thirds, how provided for.

38. When any dyked marshes are owned by two persons in such proportions that neither is interested to the extent of two thirds, either party may require one or more commissioners to take charge of and carry on any work necessary for repairing the dykes thereof.

Certiorari for removing proceedings into Supreme Court.

39. If any owner or occupier of land think himself aggrieved by the proceedings of the commissioners or of any person acting under this Chapter, he may remove the proceedings of such commissioners by certiorari into the Supreme Court, where they shall be examined if necessary, and such determination made as shall be proper, but sufficient security shall be first given by the applicant to the prothonotary of the court for payment of costs to be awarded and taxed.

Fines for clerks and other officers neglecting duty.

40. All clerks, collectors, overseers and assessors who shall neglect or refuse to comply with their duties, shall be liable to a fine of two dollars for each offence, to be collected and appropriated as other fines under this Chapter.

Notices may be verbal unless otherwise directed.

41. Every notice required to be given, unless herein otherwise directed, may be a verbal notice to be given to the parties in person or left at their dwelling houses if known, and within the distance limited in this Chapter.

Two thirds of proprietors may choose collectors and other officers, settle rates of wages, &c.

42. Two thirds in interest of the proprietors of any marsh, swamp or meadow land, may make choice of a collector, overseers and assessors, may order, confirm or disallow any plan of lands, and settle the wages to be paid to or for the collector, overseers, laborers, carts or teams, and the price to be paid for materials, and cause the same to be entered in the book of record for the guidance of the commissioners.

43. No commissioner shall be liable for any act of his predecessors in office about any work in which such commissioner is engaged, unless for money he might or could have collected on account of work done by his predecessors.

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Commissioner,  
how far liable  
for predecessors'  
acts.

44. No lands except dyke lands, properly so called, shall be rated or assessed for any dyke rate for any purpose under this Chapter.

Dyke lands alone  
to be assessed.

45. Whenever any proprietor of any marsh or swamp land, or land covered with water, is desirous of making any improvement on his own land, by deepening or widening the watercourses or drains of lands of any other person lying in front of such land, he shall be at liberty to do so independently of the commissioners of sewers or of the provisions of this Chapter. But nothing in this section shall prevent the person making such improvement from being liable for any damage he may cause by such works; provided, that no such improvement shall be begun until the party proposing to undertake the same shall have filed with the clerk of the municipality a sufficient bond, with not less than two sureties to be approved by such clerk, to pay for all damages arising from such contemplated improvement. Provided always, that whenever it shall be found necessary to cut any drain through any dyked or marsh lands the same shall be done under the supervision of the commissioners of sewers.

Persons widen-  
ing drains, &c.,  
liable for dam-  
ages.

Drainage  
through dyke  
lands under su-  
pervision of com-  
missioners.

46. Whenever pursuant to the laws of New Brunswick there shall be appointed in that Province two or more commissioners for the body of marsh on both sides of the boundary line between New Brunswick and Nova Scotia, adjacent to the Missequash river and its tributaries, north of the point where the marsh lands of Joseph Trenholm and the lands of the estate of Henry Chapman, deceased, meet such river, it shall be lawful for the Governor-in-Council upon the written requisition of the marsh proprietors on the Nova Scotia side of the said boundary line from time to time to appoint two or more commissioners of sewers, who shall be sworn into office as directed by this Chapter, and who together with an equal number of commissioners appointed in New Brunswick shall form a board called the "Missequash Commissioners of Sewers," a majority of whom shall form a quorum.

Two or more  
commissioners  
appointed by  
Governor-in-  
Council, with  
two or more ap-  
pointed by New  
Brunswick to  
form board called  
"Missequash  
Commissioners  
of Sewers."

47. Such board of commissioners, or a majority of them, shall have and exercise as regards such body of marsh on both sides of the boundary line aforesaid all the powers and privileges conferred upon commissioners of sewers generally under and by virtue of this Chapter, and in as full and ample a manner as if such property lay wholly within this Province; and it shall not be necessary

Their powers  
and privileges.



CHAP. 43. to make separate rules for the portion of land lying in this Province, nor to appoint separate officers, or take separate proceedings in reference thereto, but the proceedings may be conducted throughout by such board conjointly, and all rates and assessments upon property lying in Nova Scotia may be enforced and collected pursuant to the provisions of this Chapter.

Provision in case proprietor of marsh land lives out of jurisdiction of court.

48. In case any proprietor of marsh lands lying on the Missequash river north of the point where the marsh lands of Joseph Trenholm and the lands of the estate of Henry Chapman, deceased, meet such river, against which a rate or assessment has been made, lives out of the jurisdiction of the court in which such rate or assessment is to be recovered, it shall be lawful for such court, or the presiding officer thereof, on being satisfied by affidavit or the oath of the person serving the process of the court that such proprietor has been served with such process at least six days previous to the return thereof, to proceed in the same manner as if such proprietor lived within the jurisdiction of the court.

## CHAPTER 43.

### OF COMMON FIELDS.

Lines and boundaries, how kept up.

1. Each proprietor of lands lying unfenced or in a common field shall once in two years, on six days' notice given to him or his agent by the adjoining proprietor, run the lines and make and keep up the boundaries of such lands by stones or other sufficient marks; and any person neglecting so to do shall forfeit four dollars.

Regulations to be made at annual general meeting.

2. The proprietors of common fields shall meet annually on the first Monday of September, or on some other day to be appointed at a general meeting, at some convenient place, and by vote of a majority in interest of those present may make regulations respecting the managing, fencing and improving the same, and keeping the fences thereof in repair, and the making and repairing of roads and bridges in and across such common fields as may from time to time appear expedient.

Regulations to be recorded.

3. The regulations shall be entered in a book to be kept for the purpose, and shall be signed by the chairman of the meeting; and the production of the book and proof of the entry made therein shall be sufficient evidence of the regulations.

4. If any person shall not comply with the regulations, CHAP. 43.  
he shall forfeit a sum not exceeding two dollars.

Fine for non-compliance.  
Proceedings to compel the erection of fences.

5. In addition to any penalty imposed by this Chapter, if any proprietor shall, after three days' notice from another proprietor, neglect to obey any regulations of the proprietors under which he shall be bound to make or repair any fence, the fence viewer shall on application make or repair such fence if he shall think it insufficient; and the person so refusing shall pay double the expense to the fence viewer.

6. Every brand or mark adopted by the proprietors of any common field by their regulations for branding or marking animals to be turned thereon before being used shall be entered in the town clerk's book, and he shall receive twenty cents for making such entry.

Brands to be entered in clerk's book—see therefor.

7. The town clerk, after entry of such brand or mark, shall not enter any other brand or mark similar thereto, under a penalty not exceeding forty dollars.

Fine for second entry of same mark.

8. If any proprietor of a common field, or any person by his direction, shall with a brand or mark not recorded or entered by the town clerk brand or mark any animal for the purpose of turning the same into a common field, or shall counterfeit any such brand or mark for the purpose of branding or marking any animal, every person so offending or being accessory thereto shall forfeit a sum not exceeding twenty dollars.

Fine for unauthorized or counterfeit brand.

9. Every proprietor of any field adjoining a common field enclosed and improved, in case his part of the fence dividing his land from such common field shall become defective, shall immediately make the same a legal fence; and in case of his neglecting so to do within three days after notice given him by the field keeper or any proprietor, any fence viewer on application may forthwith cause the same to be repaired; and the person who ought to have repaired the same shall pay double the expense thereof to the fence viewer.

Proceedings to compel proprietor of adjoining lands to repair his fences.

10. If any proprietor in a common field shall desire to have his land separately fenced, he shall, unless otherwise assented to by two thirds in interest of the whole proprietors, bear the whole expense of fencing the same, and shall be bound to keep such fence in repair at his individual expense.

Proprietor desirous of fencing shall bear whole expense, unless two thirds in interest consent.

11. At the annual meeting the proprietors shall appoint from among themselves a committee of not less than three nor more than five, to carry into effect the regulations made respecting such common field for the ensuing year.

Committee of management, how appointed; their duties.

## CHAP. 43.

Instructions as to assessments for various purposes.

12. Whenever the committee shall find it necessary to raise money to carry into effect any regulation not applying to the making or repairing of roads or bridges in or across such common field, they shall assess the amount on the several proprietors or occupiers of the common field by an even and equal rate according to the quantity and quality of land held; and in cases of regulations applicable to the making and repairing of roads and bridges in or across such common field, the committee shall assess the amount on the proprietors or occupiers by an even and equal rate according to the benefit to be derived from such roads and bridges by each proprietor or occupier respectively.

Section twelve not to extend to Grand Prairie; power of committee of such dykes.

13. The last section shall not extend to any common field on the Grand Prairie or Wickwire dykes in Horton; but the committee for any common field on such dykes shall have power to make and repair all fences, gates, roads and bridges in, across or around the same, to call meetings of the proprietors, giving three days' notice to all proprietors residing within six miles of their clerk's office, and to do all acts necessary for the security and improvement of such common field, and to notify the commissioners of sewers of said dykes of such expense; and the commissioners shall include the amount in any sum of money to be by them assessed upon the proprietors of such dykes as ordinary dyke rates, and shall apply such amount in payment of the expenses incurred as certified by such committee.

Collectors appointed by committee; their duty.

14. The committee may by writing appoint a person to collect from the proprietors or occupiers the several sums assessed upon them respectively; and the collector, upon neglect of any party assessed to pay the amount for which he shall have been rated after due notice of such assessment, may collect the same as if it were a private debt due him.

Allowance to committee to be included in assessment.

15. The committee may include in any sum to be assessed one dollar for the attendance of each of their number for every day actually employed in carrying the regulations into effect.

Penalties, how collected.

16. All penalties and fines provided by this Chapter shall be imposed upon summary conviction of the offender before a justice of the peace, and in default of payment the party convicted shall be imprisoned in the county jail for a period not exceeding thirty days.

## TITLE XII.

### OF HIGHWAYS, BRIDGES, PUBLIC LANDINGS, FERRIES AND RAILROADS.

#### CHAPTER 44.

##### OF THE LAYING OUT AND MANAGEMENT OF CERTAIN GREAT ROADS.

1. The provisions of this Chapter shall extend to the following roads only, viz.: The main post road from Halifax to Pictou, thence to Antigonish, Guysborough and Saint Mary's; the great eastern road from Halifax to Saint Mary's; the eastern shore road from Dartmouth to Saint Mary's; the road from Antigonish to Port Mulgrave by Auld's and Cape Porcupine, and also from Black Bridge, Tracadie, to port Mulgrave; the road from Guysborough to the Strait of Canso; the road from McMillan's, east side of the Strait of Canso, to Saint Peter's, thence by the Bras d'Or to Sydney, and thence to the Sydney Mines, Boulardarie, Baddeck, Middle River and Margaree, thence to Broad Cove, Port Hood and McMillan's, at the Strait of Canso, thence to Baddeck by Victoria Road; the road from Arichat to Grandance; the road from Truro to Amherst, and thence to the boundary of the Province; the road from Truro to Amherst by Tatamagouche; the road from Amherst to Parrsborough; the road from Pictou to Tatamagouche; the road from Halifax to Windsor, thence to Kentville, Annapolis, Digby, Yarmouth, Shelburne and Liverpool; the road from Liverpool through Middlefield, South Brookfield, Harmony, Kempt, and Maitland to Annapolis; the road from Liverpool to Mill's Village, thence to Bridgewater and Mahone Bay, and thence to Chester and Windsor; the road from Chester to Halifax by Saint Margaret's Bay; the road leading from the Kempt road, in the County of Richmond, to West Bay, thence by the same road to Saint Peter's, thence to Grand River, thence to Louisburg by Saint Esprit; the main post road from New Glasgow, in the County of Pictou, to Sherbrooke and Wine Harbor, in the County of Guysborough; and the main post road leading from Baddeck, in the County of Victoria, to Big Baddeck Glen and thence to North River, Saint Ann's;

Roads to which  
this Chapter ap-  
plies.

CHAP. 44. the road leading from Point Brule, in the County of Colchester, to Riversdale, in the County of Pictou, by way of River John and Logansville.

Private lands  
when crossed by  
agreement.

2. Commissioners to expend moneys for the opening of new roads or altering old ones when it shall be necessary to cross private lands for that purpose, the proprietors whereof claim damages, shall if deemed for the public benefit, make an agreement in writing with the proprietors; the agreement to state the length of the road and the amount agreed on for damages and cost of fences, and to have a plan of the road and land through which it is intended to be carried annexed; and the same shall be laid before the council of the municipality, and also a statement of expenses and charges attending the same; and if the council approve of the agreement or portions thereof they shall return the same with their certificate to the Provincial Secretary's office, to be laid before the House of Assembly; and the House, having considered, may confirm the agreement or any portion thereof, in which case the same shall be returned to the Provincial Secretary's office; and the Provincial Secretary may draw warrants on the Treasurer for one half the amounts which may be confirmed, and the other half thereof shall be a charge upon the municipality within the limits of which such damages have been incurred.

Mode of proceed-  
ure when no  
agreement can  
be made.

3. When no agreement shall be made, or any part thereof shall not be confirmed, one appraiser shall be appointed by the Governor-in-Council, a second by the persons interested in the lands, and on their default after three days' notice by the commissioner, and a third shall in any case be appointed by the commissioner; and the three appraisers shall be sworn to the faithful discharge of their duties, and shall enter upon the lands and lay out the road in the manner most advantageous to the public and least detrimental to the persons interested in the land, and measure and mark the same, and appraise the lands, taking into account the improvement, and assess the damages to the owners and tenants therefor, and for fencing the sides of the road; which appraisement shall be reduced to writing, and accompanied by a plan and admeasurement of the road shall be returned to the clerk of the municipality, to be laid before the council; and further proceedings shall be had thereon in conformity with the provisions of the last preceding section.

Commissioner  
may proceed im-  
mediately upon  
agreement or  
appraisement.

4. After any agreement shall have been made or an appraisement had under the second or third section, the commissioner may enter upon the lands and proceed with the road, leaving the compensation to be paid to the pro-

prietor to be finally determined in the manner in such CHAP. 44.  
sections respectively directed.

5. No payment for fencing shall be made under this Chapter until the proprietors of the land shall have made Fences to be made before compensation.  
oath that the same has been put up in a proper manner and at least thirty-three feet from the centre of the road, and encloses in whole or in part some of his lands, and that the same shall not be removed with his assent; nor shall any compensation for such fencing be made unless claimed within one year after the road shall have been opened.

6. No money shall be drawn from the provincial Damages from treasury restricted to roads in this Chapter.  
treasury for damages on the completion or running out of any new road or alteration of any old one, other than on the roads specified in this Chapter.

7. The road shall be at least sixty-six feet in width. Width of road.

8. When any road has been or shall hereafter be made Site of road when considered surrendered.  
or altered without any demand for compensation by the proprietors of land through which such road runs, within one year from the opening thereof, such acquiescence on the part of the proprietors shall be held a voluntary surrender to Her Majesty forever for a public highway of all the land through which the new road passes to the breadth of sixty-six feet.

9. The Governor-in-Council may assume the charge What roads under charge of Governor-in-Council.  
and management of the undermentioned great roads, that is to say:

*First.*—The great road east from Halifax to Sydney, Cape Breton, passing through the counties of Halifax, Colchester, Pictou, Antigonish, Inverness, Richmond and Cape Breton.

*Second.*—The great road north, from Truro to the frontier of New Brunswick.

*Third.*—The eastern shore, from Dartmouth to Ship Harbor.

*Fourth.*—The new Guysborough road, from the point of intersection with the great eastern road at Rutherford's to the dividing line between the counties of Halifax and Guysborough.

*Fifth.*—The southern shore road from the head of the North West Arm to the dividing line between the counties of Halifax and Lunenburg.

*Sixth.*—The great western road from the city of Halifax to Avon bridge in the County of Hants.

*Seventh.*—The road from Liverpool through Middlefield, South Brookfield, Harmony, Kempt and Maitland, to Annapolis.

CHAP. 44. 10. The Governor-in-Council may lay off the great roads herein mentioned in convenient sections, not exceeding one hundred miles, and appoint one supervisor for each of the sections so laid off and determined.

Governor-in-Council may lay off said roads and appoint supervisors.

Supervisors' authority.

11. Such supervisors when duly commissioned and appointed shall have the general charge and superintendence of the sections of great road which shall be respectively entrusted to their care.

To expend money.

12. The supervisors shall be entrusted with the expenditure of whatever sums are annually voted by the legislature for the maintenance, repair and improvement of such great roads: the power of the legislature to subdivide and apportion the great road moneys not being impaired by this Chapter.

Proviso.

Mode of expenditure.

13. In the expenditure of such moneys, and in the mode of accounting for the same (except in so far as the law may be varied by any Order-in-Council which may be hereafter made and promulgated), the supervisors shall be guided and bound by the laws of this Province, and (except when restrained by any Order-in-Council) shall possess and exercise all the powers now by law possessed and exercised by commissioners of highways.

Supervisors to furnish reports.

14. It shall be the duty of such supervisors to furnish annual reports of the state, condition, and requirements of the sections of roads committed to their charge, with suggestions for their improvement, and detailed estimates of the probable cost of the alterations and improvements so suggested.

To be ruled by orders from Governor-in-Council.

15. It shall be lawful for the Governor-in-Council to issue from time to time such orders and instructions to the supervisors as may seem meet; such orders and instructions to be laid before the legislature within ten days after the opening of the next session, and to have the force of law until the same shall be disapproved.

Remuneration of supervisors.

16. The rate of remuneration to the supervisors to be appointed under this Chapter shall in no case exceed the amount of commissions which is now by law given to commissioners of roads, except where surveys of new and important sections of roads are made; and then they shall be entitled to charge at the same rate as is now paid to surveyors for the like service.

Road work to be done by contract or days' labor.

17. All road work shall be done by tender and contract, except where the expenditure of the moneys by days' work may be more advantageous to the public, and so testified to by the supervisor.

CHAPTER 45.

OF LAYING OUT ROADS OTHER THAN GREAT ROADS.

1. The provisions of this Chapter shall be applicable to roads other than those mentioned in the last preceding Chapter. Roads to which chapter applies.

2. Twenty or more freeholders of any municipality may petition the municipal council for the making of a new road or the alteration of an old one; and the council if satisfied of the propriety thereof shall order a precept to be directed to one or more competent persons, directing him or them within a convenient time to examine into the propriety of the desired new road or alteration, and if satisfied thereof to lay out and mark the same in the way most advantageous to the public and least prejudicial to the proprietors of lands through which the same shall pass. Mode of laying out new or altering old roads.

3. The persons so appointed shall examine into the propriety of such road, and if by them deemed unnecessary shall report the same to the council; and if deemed for the public benefit may lay out and mark the same, and may make an agreement in writing with the proprietors of the land through which the same shall run, which agreement shall state the length of the road and the amount agreed on for damages to soil, improvements and cost of fencing respectively, and shall have a plan annexed of the road and lands through which it shall run, to be filed with the clerk of the municipality, with a full return of proceedings thereon, to be laid before the council. Commissioners so appointed shall be entitled to be paid out of the municipal treasury not less than two nor more than three dollars for each day so employed. Persons appointed to report to council. To make agreement with proprietors. To annex plan. Remuneration.

4. When no agreement shall be made, one appraiser shall be appointed by the warden of the county, another by the owner or owners of the land, and on their default after three days' notice by the persons who shall have laid out the road, who in any case shall appoint a third; and the three appraisers shall be sworn before a justice of the peace to the faithful discharge of their duty, and shall enter upon the lands and appraise the damages to the owners for soil, improvements and fencing respectively; which appraisement shall be reduced to writing, and shall be returned to the clerk of the municipality accompanied by a plan and admeasurement of the roads, to be laid before the council. When no agreement made, appraisers to be appointed and sworn.

5. If the proprietor of the land be absent from the Province no notice need be served; and if he be absent Notice to absent proprietors.



CHAP. 45. from the county and within the Province, a notice may be forwarded to him by mail; and if after fifteen days he shall not appoint an appraiser, the warden is authorized to appoint in either case an appraiser for the absent proprietor.

When more than one proprietor, appraisers how appointed.

6. When the road shall run through the lands of more than one proprietor such of said proprietors who shall not enter into an agreement as provided by this Chapter shall join in the appointment of one appraiser for the purpose of appraising damages to their respective lands, together with the two appraisers to be appointed as hereinbefore provided; and in case of the said proprietors disagreeing or neglecting or refusing so to do after seven days' notice, the warden shall appoint one arbitrator, whose acts shall be binding on such proprietors touching such damages as if they had joined in such appointment.

Clerk to post notices of new roads or alterations.

7. The clerk of the municipality shall post notices containing the substance of such returns in at least six places of public resort in the county or township, and also near the contemplated new road or alteration, for the space of thirty days previous to the next meeting of council.

Council to confirm or disallow proceedings.

8. At the next meeting of council the proceedings shall be considered and objections if any heard thereto; and the council shall then confirm or disallow the proceedings, and if confirmed they shall be recorded.

Appraisers to apportion old roads

9. The persons appointed under the second section in making their appraisement in case of alteration of a road, may apportion the old road or parts thereof to proprietors of lands through which the alteration runs, and put a value thereon as compensation in whole or in part for the land taken for the alteration, and shall include the same in their return; but the land so apportioned must run through or adjoin the lands of the proprietor to whom it is apportioned.

New roads, &c., width of.

10. The persons appointed under this Chapter to lay out any new road or alter any old one may lay out the same of a less width than sixty feet, if they shall consider such less width sufficient for the public convenience; and the council may confirm or disallow the same.

Land apportioned, property in fee of person to whom allotted

11. When the proceedings shall be finally confirmed, the land apportioned under the ninth section shall become the absolute property in fee of the person to whom the same shall have been allotted; but it shall not be shut up, or the public excluded from the free use thereof, until closed by order of council under the law in reference to the closing of old roads.

Damages a county or district charge.

12. The damages appraised and expenses incurred shall form a county or district charge, as the municipal council may direct.

13. In case of confirmation the proprietors of the land shall be entitled to receive compensation for fencing, on making oath that the fence has been put up at least half the full width of the road from the centre thereof, as so laid out; such oath being in other respects conformable to the provisions of this Chapter.

CHAP. 45.  
Compensation for fencing, when made.

14. Where roads have been or shall hereafter be altered or made without any demand for compensation made by proprietors of land through which the new road runs within one year from the opening thereof, such acquiescence on the part of the proprietors shall be held a voluntary surrender to Her Majesty forever for a public highway of all the land through which the new road passes to the width to which the said road was originally laid out.

Sites of roads when considered surrendered.

15. The council may order the laying out of a private way either open or pent in the same manner as above prescribed; except that the application for such road need not be by twenty freeholders; and the damages in such case, or in any case where they have been hitherto allowed and have not been paid by the poor district through which the road runs, shall form a municipal charge, or shall be borne by the applicants, as the court in confirmation may order.

Private ways, how laid out.

Damages by whom paid.

16. The council may direct gates to be placed on private ways and make regulations respecting the placing and keeping thereof; and persons guilty of a breach of such regulations shall for every offence forfeit on summary conviction thereof before a justice of the peace not less than one dollar nor more than eight dollars.

Gates on private ways by order of council.

Penalty.

17. No compensation for fencing shall be made under this Chapter until the proprietor of the land shall have made oath before a justice that the fence has been put up in a proper manner, and at least one half of the whole width from the centre of the road, and encloses in whole or in part some of his lands, and that the same shall not be removed with his assent.

Fences to be made before compensation.

18. A public landing upon the shore of any navigable water may be established or altered by the same means and in the same way as a new road may be made or an old one altered under this Chapter; and in so far as the same may be applicable, the provisions of this Chapter shall extend to such landings and to roads connecting the same with the Queen's highway.

Public landings, making of.

19. Any public landing laid off or established under this Chapter may include so much land as in the opinion of the committee may be sufficient for the purposes of such landing, not to exceed in all one acre.

Extent of landing.

CHAP. 46.

## CHAPTER 46.

## OF THE EXPENDITURE OF PROVINCIAL ROAD AND BRIDGE GRANTS.

Municipal councils to appropriate road and bridge grants. 1. All the road and bridge moneys granted by the Legislature to the several municipalities shall be appropriated and apportioned by the municipal councils, and shall be expended in the manner hereinafter provided.

Mode of expenditure determined by municipal resolution. 2. The council of each municipality shall in each year at the half-yearly meeting, by resolution determine whether such moneys shall be expended under the inspection of supervisors of roads and bridges or by Commissioners.

Certified copy of resolution to be sent to Provincial Secretary. 3. A copy of such resolution, certified by the warden and clerk of the municipality, and under the corporate seal of the municipality, shall be forwarded to the Provincial Secretary within ten days after the passing of such resolution.

Appointment of supervisors. 4. In case the council determine that such moneys shall be expended under the inspection of supervisors, the council shall appoint such number of supervisors as they may deem necessary, not exceeding one for each polling district in the municipality, and where more than one shall be appointed the council shall define the district allotted to each.

Supervisors to lay out moneys. 5. The supervisor shall lay out such moneys in such places and for such purposes, in repairing the roads and bridges within the municipality, as the council shall direct and where the council shall appropriate the same.

Supervisor to report. 6. Every supervisor shall at each regular meeting of the council make a report in writing upon the condition of the roads and bridges within his district, and advise what appropriation will in his judgment be necessary for their repair and maintenance.

Appointment of commissioners. 7. In case the council determine, as provided in the second section of this Chapter, that the road and bridge moneys shall be expended by commissioners, the warden shall from time to time, on the recommendation of the councillors of the respective polling districts, appoint commissioners for superintending the expenditure of such moneys, and on like recommendation may remove them and appoint others in their places. In districts having three councillors, the recommendation of a majority shall prevail. If a majority cannot agree, the warden shall have

power to appoint commissioners without such recommen- CHAP. 46.  
 dation, and he shall have the same power in cases where  
 there are two councillors who cannot agree.

8. The commissioners shall lay out such moneys in Commissioners  
to lay out  
moneys.  
 such places and for such purposes as may be stated in their  
 commissions, and all commissions under this Chapter shall  
 be issued by the clerk of the municipality, countersigned  
 by the warden, and shall be as nearly as may be in the  
 form of schedule A to this Chapter.

9. All such moneys shall be expended by the commis- Moneys, how ex-  
pended.  
 sioner or supervisor by days' work, or by tender and  
 contract, or by contract after sale by public auction, as to  
 him may seem most advantageous.

10. The supervisor or commissioner shall render Accounts of ex-  
penditure ren-  
dered.  
 accounts, under oath, as nearly as may be in the form of  
 schedule B to this Chapter, of all expenditures made by  
 him in each polling district, which accounts, accompanied  
 by the original contracts and vouchers for all expenditures  
 included therein, shall be filed in the office of the treasurer  
 of the municipality, and there kept until transmitted to  
 the office of the Provincial Secretary. The oath required  
 by this section shall be administered by any justice of the  
 peace without fee.

11. If two justices of the peace for the district shall Appointment,  
&c., of investi-  
gating commit-  
tee.  
 certify to the warden or clerk that the work upon any road  
 or bridge has not been faithfully performed, or that any  
 contract has not been faithfully executed, the commissioner  
 or supervisor shall not draw the money entrusted to him  
 to expend upon such road or bridge, but the warden shall  
 thereupon appoint a committee of three councillors to  
 investigate the complaint, and if in the opinion of a  
 majority such work has not been faithfully performed,  
 then the council at its regular meeting, or at a special  
 meeting which may be called for that purpose, shall  
 inquire into the expenditure of the money upon such road  
 or bridge, the performance of the labor, and the execution  
 of the contract, when one has been entered into, notwith-  
 standing the same may have been performed to the  
 satisfaction of the commissioner or supervisor, which sum  
 only he shall receive, and in that event the commissioner  
 or supervisor shall be relieved from all further liability  
 except for the sum awarded by the council, and in case the  
 amount mentioned in the contract has been paid, the  
 commissioner or supervisor may recover the same by action,  
 as in case of debt, for the benefit of the roads and bridges  
 of the municipality.

## CHAP. 46.

Materials for repairs of roads.

12. Where it may be necessary or expedient to procure materials for the repairs of the roads, the supervisor or commissioner, if from the absence or obstinancy of the owner or possessor of the soil no agreement can be made with him, may enter with workmen, carts, carriages and horses, upon any unimproved lands, and therefrom, for the repair of the road, dig up and carry away, stones, clay and gravel, and cut down and carry away trees, except ornamental or fruit trees, bushes, logs, poles and brushwood, in a manner least prejudicial to the owners of said land, and the damage done thereby shall be appraised by three disinterested freeholders, nominated by the nearest justice of the peace, for the purpose, and the sum appraised shall be paid by the commissioner or supervisor to the owner of the soil if demanded within three months after,

Encroachments and encumbrances, how provided against

13. The commissioners or supervisors appointed under this Chapter shall examine the breadths of the roads within the limits of their commissions, and if it shall appear that any encroachment or encumbrance has been made or placed upon the same shall forthwith give notice to the owner or possessor of the land adjoining, that unless the road be opened and cleared to its proper width, within thirty days, the person who shall have caused or continued the encroachment or encumbrance will be prosecuted as the law directs; and the commissioners or supervisors shall make an accurate return of the breadth of the roads and of encumbrances thereon to the supreme court or council for the municipality at its next meeting after their appointment, in order that such proceedings may be thereupon had by the court as may be deemed proper to carry into effect the laws in relation to encroachments and encumbrances on the highway.

Number of laborers, wages, &c.

14. There shall not be employed in any one day more than forty laborers to work under one commissioner or supervisor, and the wages of laborers shall be paid in cash only.

Foreman's appointment and duties.

15. For every ten laborers daily employed by one commissioner or supervisor, he may employ a foreman, who shall work with the laborers, and take charge of those put under his direction, and shall work with and superintend the labourers generally in the absence of the commissioner or supervisor.

Contractor when to give security.

16. When any contract shall exceed eighty dollars, the supervisor or commissioner shall receive from the contractor sufficient security, to the satisfaction of a councillor of the district, for the faithful performance of the work.

17. The council shall from time to time determine the remuneration to be paid to commissioners and supervisors, and the amount that shall be paid per day to foremen and labourers, and for teams, horses, oxen, carts, drivers, ploughs, &c., &c., &c.

CHAP. 46.  
Council to determine remuneration.

18. The road and bridge moneys granted by the Legislature to each municipality may be drawn from the Provincial Treasury by the order of the treasurer of the municipality, countersigned by the warden, in such amounts from time to time as may be found necessary, but in no case shall more than one fourth of the whole grant to any municipality be drawn at any one time.

Road and bridge grants, how drawn.

19. The treasurer of the municipality shall file in the Provincial Secretary's office a bond with sufficient sureties, to be approved of by the warden, for an amount equal to one half the road and bridge grant for the municipality, and until such bond is filed no part of the grant shall be paid by the Provincial Secretary.

Treasurer to file bond.

20. After the first instalment of the grant is drawn every subsequent draft shall be accompanied by a detailed statement of the expenditure of the money previously drawn, with the vouchers therefor annexed, without which no money shall be paid by the Provincial Secretary, and on or before the tenth day of January in each year, the treasurer of every municipality in the Province shall transmit to the Provincial Secretary a full account of all moneys received and disbursed by him on road and bridge account for the year preceding, which shall be filed in the Provincial Secretary's office, to be laid before the committee of public accounts at the next session of the Legislature.

Detailed statement of expenditure.

21. The treasurer shall keep all moneys drawn from the Provincial Treasury for road and bridge service separate and apart from any other funds of the municipality, and shall not pay out the same for any other purpose.

Road and bridge moneys to be kept separate.

22. All payments under this Chapter shall be made by the treasurer, upon the order of the supervisor or commissioner, as the case may be, countersigned by a councillor of the district. Such order shall be as nearly as may be in the form of schedule C to this Chapter.

Payments, how to be made.

23. Where money is to be expended after sale at auction, or by tender and contract, the supervisor or commissioner shall give notice thereof by advertisement posted up ten days previously in at least five of the most public places in the district.

Advertisement of expenditure of money in certain cases.

24. Any person who removes or defaces any advertisement, notice or account, posted by a councillor, supervisor

Penalty for defacing advertisement, &c.

CHAP. 46. or commissioner, or other person under the provisions of this Chapter, shall be liable to a penalty of not less than ten nor more than eighty dollars—which penalty may be recovered by any person suing for the same before any two justices of the peace ; and when recovered shall belong half to the Crown for the purpose of the municipality, and half to the person suing for the same.

Form of con- 25. All contracts under this Chapter shall be as nearly tract. as may be in the form of schedule D to this Chapter.

Contractors to 26. All contractors under this Chapter shall, before make oath. receiving payment for any work or any order for such payment, make oath to the faithful performance of the contract, and such oath shall be as nearly as may be in the form of schedule E to this Chapter.

Ineligibility in 27. It shall not be lawful for any councillor or his certain cases. partner or clerk, or any one in his employment, to act as superintendent or commissioner, or to be interested directly or indirectly in any contract under this Chapter.

Duty of Council- 28. It shall be the duty of every councillor to obtain lers to obtain from the supervisor or commissioner of his district, who and post copies shall be bound to furnish the same, copies of all accounts of accounts. of the expenditure of the road and bridge moneys in his district, and such copies shall be posted in some conspicuous public place, or if that cannot conveniently be done shall be at all reasonable times open to the inspection of any qualified elector of the district who wishes to examine the same.

Council may 29. In any matter or thing not herein provided for make by-laws regulate ex- of the council may make by-laws to regulate the expenditure penditure. of the road and bridge moneys, and such by-laws, if not inconsistent with this Chapter, or with any other law of the Province, when approved of by the Governor-in-Council shall have the force of law.

Warden may bor- 30. In case of the destruction of or damage to any row money in bridge after the moneys apportioned have been expended, certain cases to or if the sum remaining unexpended is not sufficient to meet the emergency, the warden may, if authorized by any by-law of the council, borrow on the credit of the municipality a sum sufficient to construct or repair such bridge, not to exceed the amount fixed by the by-law. The money when borrowed shall be paid to the treasurer of the municipality, and shall be expended under the provisions of this Chapter. All sums so borrowed, with the interest thereon, shall be a first charge upon the next appropriation of moneys by the Legislature to the municipality, and shall be repaid by the treasurer out of such moneys before any other charges shall be paid.

SCHEDULES.

A.

Form of Commission.

Office of the Clerk of the  
Municipality of \_\_\_\_\_

\_\_\_\_\_, 18—

No. —

MR. \_\_\_\_\_

The Councillor for Polling district number — in said County having recommended your appointment as a Commissioner to

[Here state the character of the work to be done.]

You are hereby authorized to expend on such service, according to law, a sum not to exceed

A copy of the law respecting such expenditures is hereunto annexed for your guidance.

The sum which you are hereby authorized to expend will be paid by the Treasurer of the Municipality on completion of the service, and presentation of returns in the form prescribed by law.

A. B.,  
Warden.

C. D.,  
Clerk.

B.

Form of Commissioner's or Supervisor's Return.

CONTRACT.	Names of Labourers.	No. of days with men.	No. of days with team.	Rate per day.	Dollars.	Cents.



CHAP. 46. I, A. B., a Supervisor of Roads and Bridges for the Municipality of \_\_\_\_\_, (or, Commissioner for the performance of the work, *as the case may be*), do swear that the annexed (or, foregoing) account is just and true, and that the moneys by me expended have been fairly and honestly applied for the purposes for which they were appropriated; that I procured the best labor in my power to procure and at the lowest rates of wages, and that the manner in which the moneys were expended by me as set forth in said account respectively was, in my opinion, most advantageous to the public.

\_\_\_\_\_

C.

*Form of Order for payment of Money.*

Municipality of \_\_\_\_\_

District No. \_\_\_\_\_

\_\_\_\_\_, 18—.

\$\_\_\_\_\_

*To the Treasurer of the Municipality:*

SIR,—Please pay to bearer the sum of \_\_\_\_\_ dollars, being amount of within expenditure, which amount charge against the road and bridge moneys of this district.

\_\_\_\_\_  
Supervisor [or Commissioner.]

Countersigned,

\_\_\_\_\_  
Councillor.

\_\_\_\_\_

D.

*Form of Contract.*

Municipality of \_\_\_\_\_

District No. \_\_\_\_\_.

A. B., \_\_\_\_\_ of \_\_\_\_\_, hereby agrees with \_\_\_\_\_ of \_\_\_\_\_ Supervisor [or, Commissioner, *as the case may be*], of Roads and Bridges, to perform the following work, viz.:

and complete the same in good and workmanlike manner on or before the \_\_\_\_\_ day of \_\_\_\_\_ next. And the said Supervisor hereby agrees with the said \_\_\_\_\_ on the due performance of his contract to the satisfaction of the said Supervisor [or, Commissioner] to pay him the sum of

\_\_\_\_\_ dollars therefor by an order on the Treasurer [or CHAP. 47.  
Commissioner] of the Municipality duly certified by the  
said Supervisor.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D., \_\_\_\_\_.

\_\_\_\_\_  
*Contractor.*

\_\_\_\_\_  
*Supervisor [or, Commissioner.]*

E.

*Form of Contractor's Oath.*

I, \_\_\_\_\_, of \_\_\_\_\_, contractor, make oath and say that  
I have duly and faithfully performed the contract within  
mentioned.

Sworn to at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_,  
A. D. \_\_\_\_\_, before me,

C. D.,

*J. P.*

*(Contractor's Signature.)*

## CHAPTER 47.

### OF HIGHWAY LABOR.

1. The districts as now established for the performance of statute labor on the highways are confirmed, and the council of each municipality may erect new districts or alter the limits of those now established. Established districts confirmed until altered by Municipal Council.

2. Every male between the ages of sixteen and sixty, being able to do a reasonable day's work, shall be liable to perform two days' labor as a poll tax. Parties liable to two days' labor.

3. All males whose names are included in the assessment roll, and assessed for any sum, upon real and personal property, shall be liable to perform in addition, according to the following scale: Liability for further labor.

- One hundred to two hundred dollars, one day ;
- Two hundred to four hundred dollars, two days ;
- Four hundred to six hundred dollars, three days ;
- Six hundred to eight hundred dollars, four days ;
- Eight hundred to one thousand dollars, five days ;
- One thousand to one thousand four hundred dollars, six days ;

- CHAP. 47. One thousand four hundred to one thousand eight hundred dollars, seven days ;  
 One thousand eight hundred to two thousand two hundred dollars, eight days ;  
 Two thousand two hundred to two thousand six hundred dollars, nine days ;  
 Two thousand six hundred to three thousand dollars, ten days ;  
 Three thousand to three thousand five hundred dollars, eleven days ;  
 Three thousand five hundred to four thousand dollars, twelve days ;  
 And above four thousand, at the rate of a day to every thousand dollars.
- Exemption of males over sixty. 4. Males over sixty years of age and holding property assessed for a sum less than one thousand dollars shall be exempt from the performance of statute labor, but such persons holding property assessed for over one thousand dollars, shall be liable for the performance of statute labor in respect of such excess.
- Other exemptions. 5. Persons holding commissions in the military or civil department of the army, firemen and engine men, clergymen and ordained ministers, mail couriers and licensed ferrymen, shall be exempted from statute labor unless they are assessed for a sum over one thousand dollars, in which case they shall be liable in respect to their property for the excess over that sum, but shall not be liable to the poll tax.
- Liability of property in hands of guardians and women. 6. Property over one thousand dollars of assessed value in the hands of guardians and women shall be liable in respect to the excess, at the same rate of taxation as other property.
- Computation of days' labor. 7. In computing the number of days to be performed under the three preceding sections, the amount shall be calculated as though the amount over one thousand dollars was the whole amount of the assessment, and then upon the ordinary scale, beginning at one hundred dollars, as in section 3.
- Parties residing on certain islands except. 8. Persons residing on islands situate two miles or upwards from the main land, on which there are no public highways, shall not be liable to perform statute labor in respect to property situate on such islands.
- Surveyor may require teams. 9. The surveyor may require any person owning a horse or ox team or teams to send such team or teams properly yoked and harnessed, with a driver or drivers and a cart, to the extent of one half the labor such person is required to perform, and every day's labor of such team and driver shall count for two days.

10. The surveyor may require the whole amount of CHAP. 47.  
 statute labor imposed under this Chapter to be performed Labor to be done  
 in eight days if  
 required.  
 within a period of eight days.

11. A day when mentioned in this Chapter shall be Length of day.  
 eight working hours.

12. The surveyors and commissioners shall cause to be Time of perform-  
 ing labor.  
 summoned the persons contained in their lists to labor on  
 the highways, at the most seasonable time between the  
 first day of April and the fifteenth day of September, seed  
 time and harvest excepted, by said surveyors or commis-  
 sioners or any persons by them authorized, giving them six  
 days' personal notice of the time and place where they are to Notice.  
 be employed, and of the tools to be brought for such labor,  
 or by leaving such notice verbally or in writing with some  
 person of the age of discretion at the usual place of abode  
 of the party; and at the time and place appointed the  
 surveyors or commissioners shall attend and oversee the  
 persons so summoned to labor, in making and repairing the  
 highways and bridges in the most useful manner during the  
 number of days required by this Chapter.

13. Every person liable to perform labor under this Absentees.  
 Chapter who has been duly notified, but who may have  
 left the district and shall be absent therefrom during the  
 time appointed for the performance of his labor, and shall  
 not have provided a sufficient substitute or paid the com-  
 mutation therefor as hereinafter prescribed, or shall not  
 adduce satisfactory proof of his having performed or com-  
 muted or otherwise paid for his statute labor in some other  
 district, shall on his return to his usual place of abode pay  
 fifty cents for every day's labor to which he was liable.

14. In case a highway shall become obstructed or a Obstructions,  
 how removed.  
 bridge broken down or carried away, or a road rendered  
 impassable by any unforeseen cause, except by the falling  
 or drifting of snow, the surveyors of highways or commis-  
 sioners of streets, under the direction of two justices of the  
 peace, shall notify such persons within the district as may  
 be deemed necessary to attend immediately, either by  
 themselves or with their teams as may be considered  
 advisable, to remove the obstructions or to make such  
 repairs upon the highway or bridge as may by the justices  
 be considered absolutely necessary to render the same  
 passable; and every person so attending and laboring shall  
 be allowed for the labor by a reduction of the like number  
 of days from the labor to be by him performed under this  
 Chapter, either for that or for the subsequent year, as the  
 same may occur before or after the time limited for the

CHAP. 47. performance of highway labor in the district, in the same manner and to the same extent as if the labor had been performed at the usual time; and every person duly notified to attend and labor under this section who shall neglect to do so shall be liable to the same forfeitures as if he had neglected to attend and labor at the regular time; such forfeiture for each day when paid to reckon for one day's labor of such person under this Chapter.

Commutation.

15. It shall be lawful for any person liable to perform labor hereunder to commute his labor on the payment to the overseer or commissioners on or before the day appointed for the performance of such labor, of fifty cents for each day's labor which he is liable to perform; and the overseer or commissioners shall receive such commutation at any time within three days after the day appointed for the commencement of the labor; but the overseer or commissioners may in their discretion accept labor or the commutation within the period last named.

Forfeiture.

16. Every person duly notified who shall not labor agreeably to the notice, or tender the commutation therefor as directed in the last section, shall forfeit sixty cents for every day's labor to be by him performed.

Residents on islands.

17. No person residing upon an island whereon there are any highways upon which the performance of labor under this Chapter may be enforced shall be obliged to work or furnish any labor hereunder upon the main land, or be liable to any penalty for not so doing; but every person so residing upon an island and liable to perform labor under this Chapter, shall perform the same upon some highway or bridge on the island; and where the island shall be connected with the main land by a causeway or bridge, such portion of the labor as may be required to keep the causeway or bridge in repair or to rebuild the same shall be performed thereon.

Council may locate work.

18. The municipal council may grant permission or direct in writing persons to perform the labor on such road as they shall direct.

Surveyor may alter road with consent of two justices.

19. The surveyor of any highway and commissioner of any street, with the consent of two justices of the peace and the owner of the land through which such alteration is contemplated, may alter any road within the district of which he is surveyor, and make a return of the same to the clerk of the municipality, in order that the same may be recorded.

Breaking roads in winter.

20. The surveyors and commissioners shall, as often as may be necessary during the winter, order all persons

liable to do statute labor to work with their shovels, horses, oxen and sleds upon the highways, in order that the same may be rendered passable; and every person so liable not complying with the order shall for every omission forfeit seventy cents; but no person shall be obliged to furnish more than two days' labor of himself and team for any one fall of snow, or work in any case when the fall or drift of snow shall not exceed twelve inches in depth.

CHAP. 47.

Forfeiture,  
Proviso.

21. Every surveyor and commissioner of streets shall annually, at least 20 days before the first day of the first meeting of council which shall happen next after the time herein limited for the performance of highway labor, make a true and faithful return in writing under his hand to the clerk of the municipality of the labor performed by each person, showing the commutations and fines by him received and the expenditure thereof and the amount of moneys then in his hands, which latter the surveyor or commissioner shall at the same time pay over to the clerk of the municipality, to be expended upon the roads under the direction of the council.

Return of surveyor and commissioner.

22. When the owner of property liable to assessment for statute labor resides in another district, the labor shall be performed or the commutation paid in the district where such person resides.

Commutation money payable where person resides.

23. The council shall appoint a justice of the peace or other suitable person in each electoral district, with whom a copy of the assessment roll for that district shall be lodged; such copy to be furnished by the clerk of the municipality, who shall notify the surveyors of the persons with whom such roll is lodged, and shall require them to meet with such person at a time and place therein specified, and make out the lists of all persons liable to perform statute labor within the limits of each surveyor, and the number of days which each person shall be liable to perform; and the council shall make such regulations to secure the due notification of the surveyors as to it may seem proper; and two days' labor shall be remitted to the person with whom the assessment roll is so lodged.

Proceedings to make up roll.

24. All moneys collected by surveyors of highways and commissioners of streets shall be expended by tender and contract, or by public auction, after three days' notice in writing posted in at least two of the most public places in the district, unless in the opinion of the surveyor or commissioner it would be more advantageous to the public that such expenditure should be by day's work; and in

Expenditure of moneys.

By day's work to be attested.

**CHAP. 47.** cases of expenditure by day's work, the surveyor or commissioner shall make oath to his accounts in the same form as in the expenditure of government road money.

**Penalty on surveyor for neglect** 25. Each surveyor and commissioner who shall by neglect or misconduct cause the loss of any statute labor, shall be liable to pay double the amount of such statute labor, to be recovered as debts of that amount are now recoverable: such amount to be proceeded for within two years, and when recovered to be applied as follows; one half for the roads within the county or district, and one half to the prosecutor.

**How recovered and applied.**

**Penalty.** 26. Every surveyor or commissioner for any other neglect of duty shall be liable to a penalty of eight dollars, to be recovered and applied as in the last preceding section.

**Pay of surveyors** 27. The surveyor of statute labor shall retain out of the moneys in his hands the sum of one dollar for each and every day which he is obliged to attend on the road, over and above the number of days which he is liable to perform under this Chapter.

**Forfeitures by minors, how recovered.** 28. All fines and forfeitures incurred by minors under this Chapter may be recovered from the parents, masters, or guardians of such minors with whom such minors reside, or who have a right to receive their wages, in the manner provided in the next following section.

**Forfeitures, how recovered and applied.** 29. Forfeitures under this Chapter shall be sued for and recovered by the surveyor or commissioners by their name of office as surveyor of highways or commissioners of streets for the place for which they have been appointed, or in the individual names of them or any of them, or by and in the name of any person who will sue therefor, and in any case in the same manner and with the like costs as if they were private debts; and when recovered shall be applied by the surveyor or commissioners to the repair of the highways.

**Form of return.** 30. Returns of statute labor shall be made in the form in the schedule hereto annexed.

**General inspectors.** 31. The council may once in each year appoint one or more general inspectors of statute labor, whose salary and duties shall be fixed by such council.

**Blank forms, how furnished.** 32. Blank forms of surveyor's returns of highway labor shall be furnished from the Provincial Secretary's office, and forwarded to the clerks of the municipalities on application made for that purpose.

**Clerk of council to prosecute surveyors.** 33. It shall be the duty of the clerk of the municipality to prosecute delinquent surveyors for neglect or breach of duty under sections twenty-five and twenty-six of this Chapter.

SCHEDULE.

*Municipality of* \_\_\_\_\_ *18—.*  
 Return of Statute Labor for \_\_\_\_\_ Road District,  
 No. \_\_\_\_\_, named \_\_\_\_\_.

Names of parties liable for statute labor	No. of days for which liable.	Day's work performed.	Commutation.		Fines collected.		Fines not collected.	
			Dols.	cts.	Dols.	cts.	Dols.	cts.

Account of expenditure of moneys collected from commutations, fines, &c., as per foregoing return.

Names of laborers.	Days men.	Days with team.	Rate per day.	Dols.	cts.	Contracts & Materials.

N. B.—In case any portion of the labor is performed by contract, the date, name of the contractor, and particulars of the contract, to be set forth in the right-hand column.



## CHAP. 48.

## CHAPTER 48.

## OF THE PRESERVATION OF ROADS.

1. If any person shall illegally alter or encroach on a public highway or private road laid out and established by law, he shall forfeit twenty dollars.
- Fine for alterations or encroachments.
2. A justice of the peace on his own view or on the oath of a witness may impose a fine not exceeding four dollars on any person who shall encumber any road or bridge by placing anything thereon, to be levied by warrant of distress on the offender's goods, or in case the offender shall not be known, by sale of the encumbrance; the surplus if any being retained for the owner when discovered. If the encumbrance shall be continued, it shall be deemed a new offence.
- Justice may fine for encumbering roads.
- How levied.
3. The council of each municipality may make regulations for preserving the side paths of any public highway, except within the City of Halifax or any incorporated town, from being injured; and every person guilty of a breach of the regulations shall forfeit not less than one nor more than ten dollars.
- Side path preserved by order of council.
4. If any person shall destroy or injure any trees or underwood growing upon the land lying between any river, lake or arm of the sea, and any public highway running within thirty feet of the margin thereof, he shall forfeit a sum not exceeding eight dollars.
- Fine for destroying trees, &c., between rivers and highways.
5. If any person shall injure or destroy any trees or underwood growing at any place where the bank shall not be of greater width than twenty feet from the side line of the road to the waters of any river, sea or harbor, or shall from any place above high water mark where the bank shall not be of greater width than before mentioned unless for agricultural purposes in a cultivated part thereof, carry away from the bank any earth or stones, or shall take from out of the bank where not of greater width than before mentioned any earth or stones near the roots of any trees or underwood, whereby the trees or underwood shall be injured or destroyed, he shall forfeit for every offence eight dollars; and in default of payment or goods whereon to levy he shall be committed to jail for not less than ten nor more than thirty days.
- Roads near sea, &c., banks not to be injured.
6. All encumbrances found on the ditches of the roads shall be forfeited and may be disposed of by the surveyor
- Encumbrances forfeited.

of highways without any legal proceedings; and the proceeds shall be applied by the surveyor to the repair of the road. CHAP. 48.

7. No person shall ride or drive any horse at full speed or in a disorderly manner in the public street or highway in any town or village. Persons violating this provision shall forfeit a sum not exceeding four dollars for each offence, to be recovered as directed in the sixteenth section. Disorderly driving, penalty, &c.

8. No person shall trot or gallop any horse over a bridge within or partly within this Province of greater length than twenty-five feet. Bridges protected.

9. Carriages on runners driven on the highway shall have affixed to the harness two good open bells or four good round bells, such as are commonly used in sleighs. Carriages on runners driven with bells.

10. Carriages on runners used for the conveyance of loads on the highway shall not be less than four feet wide from outside to outside. Width of carriages on runners.

11. No load of hay or straw of greater width than fourteen feet shall be drawn on any highway. Width of loads of hay, &c.

12. No unloaded sled shall have pointed stakes standing, or frames or projecting pieces outside. Unloaded sleds.

13. Persons in driving upon the highway shall leave the centre of the road on their right hand. Centre of road to be left on the right.

14. Persons attempting when driving to pass another carriage on the highway heading in the same direction shall leave a sufficient way open on their left hand for the carriage which they are about to pass. Persons passing in carriages to leave space on left.

15. Carriages standing on the highway shall not be nearer the centre of the road than eighteen inches and on the proper side thereof. Carriages standing.

16. Persons violating any of the provisions of the last eight sections shall for each offence forfeit two dollars, and in default of payment or goods whereon to levy shall be committed to jail for not more than forty-eight hours; but the prosecutions must be commenced within forty-eight hours after the offence. Fines for offences, when to be prosecuted.

17. Forfeitures under this Chapter not specifically appropriated shall be applied under the directions of the council to the repair of roads and bridges; and all fines, penalties and forfeitures provided by this Chapter shall be imposed upon summary conviction before a justice of the peace. How applied and collected.

CHAP. 49.

## CHAPTER 49.

## OF CLOSING ROADS.

Old roads may be closed by council on petition; proceedings prescribed.

1. Where a line of road has been altered and the old road has been abandoned by the public as a general thoroughfare, any of the proprietors of land adjoining the old road may, by petition stating the facts and the names of all persons interested in the lands on either side of the road, apply to the council of the municipality to shut up or otherwise dispose of the same; which petition shall be accompanied by an affidavit that at least thirty days' previous notice in writing of the application has been given to the parties interested and posted up in two public places near the road; and the council shall hear the parties applying and their witnesses, and also the parties notified, if they shall desire it, and their witnesses, and shall make an order either dismissing the application or granting or modifying the same. Persons dissatisfied with the order may appeal therefrom within ten days to the next sitting of the Supreme Court; and the clerk of the municipality shall thereupon return the proceedings to the Supreme Court, who shall examine them, and if deemed advisable hear the parties appearing and their witnesses, and shall make such order as shall seem right therein. The order of the council if not appealed from, and the order of the Supreme Court in case of appeal, to be conclusive.

Parties who may be heard; appeal allowed.

2. Persons although not interested in lands adjoining or near the road, and their witnesses, may be heard against the closing or disposing thereof, and may appeal from the order of the council.

Where owner of adjoining lands dead, who to be considered proprietor.

3. If any land adjoining the road shall have been the property of a person deceased and be not divided among his heirs, the representatives of the deceased person and the guardian of his minor children if any, and the person in possession of the land, shall for the purposes of this Chapter be considered the proprietors.

New roads, how closed.

4. New roads may be closed in the manner provided in this Chapter, and the proceedings for that object shall be as nearly as possible conformable to the provisions of this Chapter.

## CHAPTER 50.

## OF COMMISSIONERS OF STREETS.

1. The jurisdiction of the commissioners shall be Jurisdiction. confined to the limits following, that is to say :

*For Maitland.*

From Richard Anthony's east line to the Five Mile River, and along the Kennetcook road to Rocky Brook.

*For Bridgetown.*

Within the bounds following, that is to say : beginning at the western boundary line of the late William Ruffee, one half mile to the northward of the Granville main road as now situate, thence westwardly until it meets the eastern boundary line of the late Henry Troop, thence southwardly until it meets the Annapolis River, thence by the course of the river to the western line of William Ruffee, thence northwardly the course of that line to the bound first mentioned.

*For Annapolis Royal.*

To such parts of the town as extend eastwardly to the intersection of the main road to Halifax, by the old road leading to the Dalhousie settlement, southwardly to the General's Bridge, westwardly to Allen's Creek, and northwardly to Hog Island, including the same.

*For Digby.*

To all the roads and streets which are comprehended within a circuit of two miles extending from the court house in the Town of Digby in every direction.

*For Liverpool.*

To such parts thereof as extend from Fort Point by the western side of Liverpool Harbor to the bridge crossing the main road leading to the falls near More's tan-yard, thence south-west one mile, thence south-east one mile, thence north-east until it strikes the harbor of Liverpool, and thence by the harbor to Fort Point.

CHAP. 50.*For Antigonish.*

To the Town of Antigonish within the following limits :  
 On the Hollowell Grant Road to the west line of the land of Joseph Dexter ; on the Harbor Road including landing road to Angus McEachran's eastern line ; on the Saint Andrew's Road to south end of bridge at McAmes' ; on Glen Road to southern end of Wilkie's Bridge ; on Marshy Hope Road to T. S. Lindsay's west line ; on North Grant Road to the north end of a bridge known as Lachy's Bridge ; and on Church Street to H. P. Hill's south line, and to include new streets opened up.

*For Milton.*

Beginning on the eastern side of Liverpool River at a bridge called Salmon Island Bridge, thence running at right angles to the river eastwardly half a mile, thence northwardly parallel to the river until it comes opposite to Thomas Hetherington's house, thence running one mile and a quarter on a course about north forty-five degrees west, in the direction of and past the house of Joseph Ford, junr., including such house, thence southwardly parallel to the river until it comes opposite to the residence of Freeman Tupper, inclusive, thence to the river, thence down the river to Salmon River Bridge.

*For Port Medway.*

From the Western Head to South West Cove, and extending back from the river one mile.

*For Tusket Village.*

From the court house in Tusket, to extend one mile in every direction.

*For Lunenburg.*

Within such parts of the town as extend eastward to the south-west angle of the garden lots nearest to the town, west to the road leading to Burn's tan-yard, and north to the bridge in the rear of the town.

*For Chester.*

To the town plot.

*For Guysborough.*CHAP. 50.

To the town plot.

*For Sydney.*

To the peninsula of Sydney, extending to the southward and eastward to Fresh Water River Creek, the old Saint Peter's road, and thence in an eastwardly direction to Cossitt's Mill Brook, and thence to be bounded by the brook until it meets the waters of Malony's Creek.

*For the North Bar.*

To the North Bar in the County of Cape Breton, as laid off by the municipal council.

*For Sydney Mines.*

To Sydney Mines in the County of Cape Breton, as set off and defined by the municipal council.

*For Port Hawkesbury.*

To all the roads and streets which are comprehended within a circuit of one mile extending from the Methodist meeting house in the town of Port Hawkesbury, in every direction.

*For Port Hood.*

To the village of Port Hood, in the County of Inverness, within the following limits: Bounded south by the bridge at Little River, north by William Watt's southern line, east by East street, and west by the waters of the harbor at Port Hood.

*For Tatamagouche.*

Beginning at the bridge at John Pride's, and running thence westwardly along the main post road leading through Tatamagouche, until it comes to the Block House bridge, and to include a distance of one half mile from the western boundary of the river.

*For New Caledonia.*

From Jacob Sturk's west line, west to William M. Weatherspoon's west line, bounded south by the Annapolis river, and running north half a mile from the main road.

## CHAP. 50.

2. The commissioners shall appoint a clerk and receiver of moneys, and may subdivide their districts and assign a part to each commissioner.

Clerk and receiver appointed; subdivision of districts.

Duties of commissioners.

3. The commissioners shall remove all encumbrances upon the streets, prevent encroachments thereon, make repairs, alterations, and improvements therein as required, open and make new streets when authorized, make and repair bridges, and cause to be observed the laws touching the streets and bridges, or the work to be performed thereon; and especially shall call out, sue for, levy, and receive from the inhabitants liable to perform highway labor the moneys, services, highway work and penalties and composition therefor, due, payable or to be performed by them; and shall prosecute for offences committed against the laws relating to highways, and sue persons holding moneys appropriated to the repair of the streets, or not paying any penalty appropriated thereto.

Accounts of commissioners

4. The commissioners shall keep an exact account of moneys received by them and services performed under their direction; and shall, under a penalty of twenty dollars, annually, on or before the first day of the next meeting of council after the time limited for the performance of statute labor, render under their hands to the clerk of the municipality, to be laid before the council, a general, regular, and fair account in writing of all moneys received and paid by them as commissioners for the past year, to the end that the same may be audited and passed by the council.

Further duties of commissioners.

5. The commissioners shall from time to time cause the streets within their divisions to be cleared, repaired, raised, sunk, altered or paved as they may deem proper; and may also cause to be dug and carried out of or brought into the streets materials from the shores of the harbors, doing as little injury as possible in any case to the proprietors of the soil; and may employ and pay boatmen, carts, and laborers as they may judge conducive to the accomplishing the designs of this Chapter; and may also make contracts for the repairing and paving of the streets; and may compound with persons by the year for such sum in advance as they may deem reasonable for the proportion of highway labor or payments to which such persons may be liable; and may put up bars and fences to shut up streets while undergoing repairs; and may raise, sink, alter or new lay drains, water-courses, pipes and sewers as they may think proper, causing as little detriment to individuals as the case will admit of; and may cause the courses of gutters, water courses or channels running in

or through the streets to be altered as they shall think CHAP. 50.  
proper.

6. Persons residing within the foregoing limits respectively shall keep the gutters and streets before the houses, buildings or land inhabited or occupied by them free from dirt, filth and nuisance of every kind; and whenever any encumbrance or nuisance shall be found in any of the streets the person before or nearest whose house, building or land the same shall be, shall forfeit four dollars, and also pay the expense of removing the same; and any commissioner may cause the removal thereof without giving notice to the owner, or being in any way answerable therefor; but no person shall be liable to this penalty unless he shall have placed the nuisance or encumbrance in the street where found, or not having so placed it shall suffer the same to continue twenty-four hours.

Fine for neglecting to keep gutters and streets in front of premises clean.

7. Persons by leave of the commissioners may place in the streets materials for building, not to include ships, and erect posts, bars or enclosures for securing such materials, and continue the same for such time as the commissioners may give leave, and in manner as they shall direct, and not longer or otherwise, on pain of forfeiture.

Persons building may occupy streets for materials.

8. The commissioners may cause wells to be dug and pumps to be placed therein, in the streets where they shall judge necessary and convenient, in manner as they shall direct.

Wells and pumps, how provided.

9. The commissioners shall cause all things belonging to any building or cellar, or to any ground or enclosure thereof, which may occasion any nuisance, encroachment or annoyance in any street, to be removed or altered in manner approved by them or their surveyor; or, if it can be done without particular inconvenience to the public, may suffer the same to remain, upon the proprietor giving security that it shall not be repaired or rebuilt, and also paying to the commissioners a reasonable annual ground rent for the part of the street encroached on, during the continuance of the encroachment.

Nuisances and encroachments liable to removal.

10. Persons intending to build upon or close to the line of a street, shall before digging a foundation or beginning the building, apply to the commissioners to cause the line of the street to be defined and laid out, and shall defray the expense of a surveyor, if necessary to employ one, and shall dig the foundation and erect the building within the line, avoiding any encroachment; and if any person shall erect a building upon the line of the street without making such application and having the line so ascertained, he shall forfeit forty dollars, and shall also remove the encroachment, or otherwise the commissioners

Line of street, how protected in case of new buildings.



CHAP. 50. may remove the same or take the steps by law allowed in cases of common nuisances.

Line settled by jury in case of dispute; return, how confirmed.

11. When the commissioners shall have proceeded to ascertain the line of the street on the application of any person about to build thereon, and he shall be dissatisfied with the line pointed out by the commissioners, a judge of the Supreme Court shall, upon application of either party, issue a precept to the sheriff or his deputy, to summon a jury of twelve disinterested freeholders to meet at some convenient day therein mentioned to view and lay out the line; and the jury shall have an oath administered to them by the sheriff or his deputy, well and truly to lay out and establish the line of the street according to their best judgment; and the witnesses tendered shall be sworn by the sheriff or his deputy; and, if the jurors or either party require it, a new survey of the line shall be made; and the sheriff or his deputy shall make a return forthwith under the hands of himself and the jurors to the judge, who, if he shall approve thereof, shall confirm the return, and the same shall be filed in the office of the clerk of the municipality; but if the judge shall not approve of the return a new precept shall be issued, and further proceedings had thereon in manner prescribed as to the first precept, and so on until a return be confirmed; and the judge shall direct how and by whom the expenses of the proceedings shall be paid, and the same shall be taxed by the judge and shall not exceed forty dollars.

Soil of streets to be broken only after permission in writing; fine for offences.

12. No person shall break up the soil of a street without first making application to the commissioners in writing, specifying the purpose for which such breaking up is required, and obtaining their permission therefor in writing; and the commissioners may impose such terms upon the person applying as the security of passengers shall appear to them to require; and any person acting contrary to this section or to terms imposed by the commissioners shall for every offence forfeit twenty dollars.

Fine for injury to side path.

13. Every person who shall drive any carriage or ride over a side path, or roll or place heavy articles over or on the same to the injury or obstruction of the side path, shall for every offence forfeit not less than one nor more than eight dollars.

Bridge at Bridgetown under charge of the commissioners.

14. The whole of the bridge over the Annapolis river at Bridgetown shall continue under the charge of the commissioners there, whose duty it shall be to see to the proper keeping and repair thereof; and they shall take such measures for preventing injury to the bridge and for bringing to punishment persons guilty of wilfully injuring the same as to them may appear expedient.

15. The municipal councils of the several municipalities throughout the Province are hereby authorized, from time to time, as such councils shall deem proper :

CHAP. 50.

Municipal councils to have certain powers.

(1.) To set off, enlarge, restrict, alter, or define the limits of any district under the supervision of commissioners of streets ; whether such limits are or shall hereafter be established by any Act of the Legislature, or by order of the council.

(2.) To increase, diminish, or fix the number of such commissioners for any such district.

(3.) To fix and to alter the compensation to be paid or allowed to such commissioners for their services.

16. The council shall not exercise the authority hereby conferred in respect of any incorporated city or town.

Such powers not to be exercised in towns.

17. The council in setting off districts may include within their limits any bridge now or hereafter to be built over any brook, stream or river, dividing any districts or townships, and may place such bridge or any part thereof under the charge of the commissioners having supervision within such districts.

Bridges over rivers, &c., dividing townships, &c.

18. Upon being sworn to the faithful discharge of their duty, all the provisions of this Chapter shall apply to the commissioners.

Provisions of this Chapter to apply.

19. The commissioners shall have all the powers by law vested in the surveyors of highways ; and no surveyors of highways shall have any powers within the jurisdiction of such commissioners.

Powers of commissioners.

20. All fines and penalties provided by this Chapter shall be imposed on summary conviction before a justice of the peace, and all fines and penalties recovered under this Chapter shall be paid over to the commissioners of streets for the place where the conviction was made, for the repair of the streets, or other purposes of this Chapter.

Moneys and fines, how recovered and applied.

21. No action shall be commenced against the commissioners or persons acting under them until twenty days notice in writing shall be given to one or more of the commissioners, nor after six months next after the act committed for which the action shall be brought ; and every such action shall be laid and tried in the county within which the commissioners have jurisdiction.

Notice of action against commissioners.

Limitation.

22. The word " commissioners," when used in this Chapter, shall include the commissioners of streets or the major part of them within their respective jurisdictions, unless otherwise expressed or repugnant to the sense ; and the word " streets " shall include highways, lanes and bridges.

Definition of terms.

23. Nothing in this Chapter shall apply to the city of Halifax or any incorporated town.

Where Chapter applies.

CHAP. 51.

## CHAPTER 51.

## OF BRIDGES AND PUBLIC LANDINGS.

Wharves, landings, and certain bridges under control of council. 1. The municipal council shall have control of all public wharves and public landings and of all drawbridges, and also of all bridges on public roads within the several municipalities within the Province.

Council may make orders respecting same. 2. The council may make orders for the preservation and proper keeping of such bridges, wharves and landings, and may appoint persons to superintend the same, and who shall in such case be sworn to the faithful discharge of their duties before a justice of the peace; and the council may affix penalties for the breach of any such orders not exceeding in any one case twelve dollars, and may also impose charges on vessels lying at, and goods landed on such wharves or landings, and may direct the mode of recovery and application of such penalties and charges; but nothing herein contained shall affect rights conferred by any act of incorporation in relation to any such bridge, public wharf or public landing.

Draws to be made in bridges. 3. The councils are authorized to cause draws to be made in any of the bridges erected or to be erected over any of the rivers in this Province; and all such bridges so converted into draw bridges shall be thereafter subject to all the provisions of this Chapter; but nothing herein contained shall authorize the placing a draw in any bridge built under any charter or act of incorporation.

Materials for public works, how taken from private lands. Damages, how appraised and paid. 4. Whenever it shall be necessary for any commissioner appointed by the Governor-in-Council to erect, build or repair any public wharf, pier, building or other public work, to procure materials therefor, and such materials can be obtained on lands owned by any person, but through the obstinacy or absence of the owner or from any other cause no agreement can be made with him for the purchase of such materials, the commissioner may enter upon such lands with workmen, carts, horses and teams, and thereupon for the purposes of such public work dig up and carry away soil, stones and gravel, and cut down and carry away bushes, poles and brushwood; and the damage done thereby shall be appraised by three disinterested freeholders, nominated by the nearest justice of the peace not interested in the premises, and the sum appraised shall be paid by the commissioner to the owner of the lands if demanded within three months, or otherwise into the treasury of the county where the lands lie, for the use of the person entitled thereto.

5. Nothing herein contained shall be construed to CHAP. 52. permit any such commissioner to enter on any garden or yard attached to a homestead, or on any land under crop, or meadow or other cultivated land, save for the purpose of passage in case of necessity; nor to permit him to cut down or take away any fruit tree or ornamental tree.

Certain lands, &c., exempt from section 4.

## CHAPTER 52.

### OF FERRIES.

1. The council of the several municipalities may establish ferries over harbors, bays, rivers and creeks within their municipalities, and agree with and grant licenses to ferrymen on one or both sides thereof, under the regulations and at the rates of ferriage by the council established or to be established.

Ferries established and regulated by council.

2. Ferrymen shall keep safe and good boats or vessels in good repair and suitable for the ferry, and give ready attendance on the passengers according to the regulations.

Duty of ferryman.

3. Ferrymen not complying with the regulations, or receiving more than the established rate of ferriage, or neglecting to keep boats or vessels, or to give attendance as hereinbefore directed, shall forfeit for every offence not less than two dollars nor more than eight dollars; and shall be further liable to an action on the case for damage by any person sustained from the neglect.

Fine for neglect of duty; further liability.

4. When a ferry has been established and the ferryman licensed, if any other person shall carry over the harbor, bay, river or creek, whereon the ferry is established, any person, cattle or carriage for hire, unless by consent of the licensed ferryman, or on his not giving due attendance, he shall for every offence forfeit not less than one dollar nor more than four dollars to the use of the person suing; and in default of goods whereon to levy, the person convicted shall be committed to jail for not less than five nor more than ten days, to be in the execution expressed, unless the amount shall be sooner paid; but if the licensed ferryman shall not give attendance pursuant to the regulations, then any other person may supply his place and receive pay as if licensed until another shall be appointed.

Fine for interfering with ferryman's privileges.

CHAP. 53.

## CHAPTER 53.

## OF RAILWAYS.

Application of part first of Chapter. 1. The provisions of this Chapter from section five to section thirty-three both inclusive, being part first of this Chapter, shall apply to every railway constructed and in operation, or hereafter to be constructed, under the authority of any Act passed by the Legislature of Nova Scotia, and shall, so far as they are applicable to the undertaking, be incorporated with the special Act, form part thereof, and be construed as forming one Act, unless they are inconsistent with or are expressly varied, or excepted by the special Act or other Act of the Legislature of Nova Scotia.

Not to nullify special contract. 2. No special contract or obligation of any company or contractor to complete lines of railway now under construction shall be nullified or varied hereby, and all such contracts and enactments relating thereto shall remain in full force until such line is completed, and a certificate to that effect is given by the Provincial Engineer, under the authority of the Commissioner of Public Works and Mines. All obligations of such companies or contractors in relation to the operation of such lines of railway now under construction, and all enactments respecting the same after completion, shall remain in full force, and all conditions and specifications shall be fully carried out, as well as the provisions of this Chapter wherein additional restrictions are provided.

Sections, how excepted from incorporation. 3. For the purpose of excepting from incorporation with the special Act any of the sections forming part first of this Chapter, it shall be sufficient in the special Act to enact that the provisions of this Chapter proposed to be excepted, referring to them by the words forming the headings or numbers of such section or sub-section, as the case may be, respectively, shall not be incorporated with such Act, and the special Act shall thereupon be construed accordingly.

Application of part second of Chapter. 4. The remaining provisions of this Chapter, being part second, shall apply to all railways which have been or which may hereafter be constructed under the authority of any special Act passed by the Legislature of Nova Scotia, and to all companies which have been or may hereafter be incorporated for their construction and working.

## PART FIRST.

## CHAP. 53.

## INTERPRETATION.

5. (1.) The expression "the special Act," used in this Chapter shall be construed to mean any Act authorizing the construction of a railway with which this Chapter is incorporated. "The Special Act."

(2.) The word "prescribed," used in this Chapter in reference to any matter herein stated, shall be construed to refer to such matter, as the same is prescribed or provided for in the special Act; and the sentence in which such word occurs shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special Act" had been used. "Prescribed."

(3.) The expression "the lands" shall mean the lands which by the special Act are authorized to be taken or used for the purpose thereof. "The Lands."

(4.) The expression "the undertaking" shall mean the railway and works, of whatever description, by the special Act authorized to be executed. "The undertakings."

(5.) The following words and expressions, both in this Chapter and the special Act, shall have the meanings hereby assigned to them, unless there is something in the subject or context repugnant to such construction, that is to say: In this and the Special Act.

(6.) The word "lands" shall include all real estate, messuages, lands, tenements and hereditaments, of any tenure. "Lands."

(7.) The word "lease" shall include any agreement for a lease. "Lease."

(8.) The word "toll" shall include any rate or charge or other payment payable under this Chapter or the special Act for any passenger, animal, carriage, goods, merchandise, matters or things conveyed on the railway. "Toll."

(9.) The word "goods" shall include things of every kind that may be conveyed upon the railway, or upon steam or other vessels connected therewith. "Goods."

(10.) The word "county" shall include county or any division thereof, into separate municipalities. "County."

(11.) The word "highways" shall mean all public roads, streets, lanes, and other public ways and communications. "Highways."

(12.) The word "sheriff" shall include under sheriff or other legal competent deputy; and where any matter in relation to any lands is required to be done by any sheriff or clerk of the municipality, the expression "the sheriff," or the expression "clerk of the municipality," shall in such case be construed to mean the sheriff or clerk of the municipality of the district, county, or place where "Sheriff."

**CHAP. 53.** such lands are situate ; and if the lands in question, being the property of one and the same party, be situate not wholly in one district, county or place, the same expression shall be construed to mean the sheriff or clerk of the municipality of any such district, county, or place where any part of such lands are situate.

“Justice.” (13.) The word “justice” shall mean a justice of the peace acting for the district, county, city or place where the matter requiring the cognizance of a justice arises, and who is not interested in the matter ; and where the matter arises in respect of lands being the property of one and the same party, situate not wholly in any one district, county city or place, the word “justice” shall mean a justice acting for the district, county, city or place where any part of such lands are situate, and who is not interested in such matter ; and where any matter is authorized or required to be done by two justices, the expression “two justices” shall be understood to mean two justices assembled and acting together.

“Owner.” (14.) The word “owner,” where, under the provisions of this Chapter or the special Act, any notice is required to be given to the owner of any lands, or where any Act is authorized or required to be done with the consent of the owner, shall be understood to mean any corporation or person who, under the provisions of this Chapter, or the special Act, or any Act incorporated therewith, would be enabled to sell and convey lands to the company.

“The company.” (15.) The expression “the company” shall mean the company or party authorized by the special Act to construct the railway.

“The railway.” (16.) The expression “the railway” shall mean the railway and the works by the special Act authorized to be constructed.

#### INCORPORATION.

Company established under special Act. 6. Every company established under any special Act shall be a body corporate under the name declared in the special Act, and shall be vested with all the powers, privileges and immunities necessary to carry into effect the intentions and objects of this Chapter and of the special Act therefor, and which are incident to such corporation.

#### POWERS.

Company's powers. 7. The company shall have power and authority,—

To receive grants of lands, &c. (1.) To receive, hold and take all voluntary grants and donations of land or other property made to it, to aid in the construction, maintenance and accommodation of the railway ; but the same shall be held and used for the purpose of such grants or donations only.

(2.) To purchase, hold and take of any corporation or person any land or other property necessary for the construction, maintenance, accommodation and use of the railway and also to alienate, sell or dispose of the same. CHAP. 53.  
To purchase  
lands, &c.

(3.) No railway company shall take possession of, use or occupy any lands vested in Her Majesty without the consent of the Governor-in-Council; but with such consent any such company may take and appropriate for the use of their railway and works but not alienate so much of the wild lands of the Crown lying on the route of the railway as have not been granted or sold, and as may be necessary for such railway, as also so much of the public beach, or of the land covered with the waters of any lake, river, stream or canal or of their respective beds as is necessary for making and completing and using their said railway and works, subject however to the authority and control of the parliament of Canada as regards navigation and shipping. To occupy public  
lands with consent  
of Government.

(4.) The company shall have power and authority to make, carry or place the railway across or upon the lands of any corporation or person on the line of the railway, or within the distance from such line stated in the special Act, although through error or other cause the name of such party has not been entered in the book of reference hereinafter mentioned, or although some other party has been erroneously mentioned as the owner of or entitled to convey or is interested in such lands. To carry railway  
across lands of  
corporation, &c.

(5.) To construct, maintain and work the railway across, along, or upon any stream of water, water course, canal, highway or railway which it intersects or touches; but the stream, water course, highway, canal or railway so intersected or touched shall be restored by the company to its former state, or to such state as not to impair its usefulness. Across and along  
streams.

(6.) To make, complete, alter and keep in repair the railway with one or more sets of rails or tracks, to be worked by the force and power of steam, or of the atmosphere, or of animals, or by mechanical power, or by any combination of them. To complete rail-  
way with tracks.

(7.) To erect and maintain all necessary and convenient buildings, stations, depots, wharves and fixtures, and from time to time to alter, repair or enlarge the same, and to purchase and acquire stationary or locomotive engines and carriages, waggons, floats and other machinery necessary for the accommodation and use of the passengers, freight and business of the railway. To erect build-  
ings, &c.

(8.) To make branch railways, if required and provided by the special Act, and to manage the same, and for that To make branch  
railways.



CHAP. 53. purpose to exercise all the powers, privileges and authorities necessary therefor in as full and ample a manner as for the railway.

To do all other necessary things. (9.) To construct and make all other matters and things necessary and convenient for the making, extending and using of the railway, in pursuance of this Chapter and of the special Act.

To convey persons and goods. (10.) To take transport, carry and convey persons and goods on the railway, to regulate the time and manner in which the same shall be transported, and the tolls and compensation to be paid therefor, and to receive such tolls and compensation.

To borrow money, &c. (11.) To borrow from time to time, either in Canada or elsewhere, such sums of money as may be expedient for completing, maintaining or working the railway, and at a rate of interest not exceeding eight per cent. per annum, and to make the bonds, debentures or other securities granted for the sums so borrowed, payable either in currency or in sterling, and at such place or places within Canada, or without, as may be deemed advisable, and to sell the same at such prices or discount as may be deemed expedient or be necessary, and to hypothecate, mortgage or pledge the lands, tolls, revenues and other properties of the company for the due payment of the said sums and the interest thereon, but no such debenture shall be for a less sum than one hundred dollars, and in all respects such debentures shall be of such a character and amount as shall be fixed by Act of the Legislature.

To enter upon lands for survey. (12.) To enter into and upon any crown lands without previous license therefor, or into and upon the lands of any corporation or person whatsoever lying in the intended route or line of the railway; and to make surveys, examinations or other necessary arrangements on such lands necessary for fixing the site of the railway, and to set out and ascertain such parts of the lands as are necessary and proper for the railway.

To fell or remove trees. (13.) To fell or remove any trees standing in any woods, lands or forests where the railway passes, to the distance of six rods from either side thereof.

To cross or unite with other railways. (14.) To cross, intersect, join and unite the railway with any other railway at any point on its route, and upon the lands of such other railway, with the necessary conveniences for the purposes of such connection; and the owners of both railways may unite in forming such intersection and grant the facilities therefor; and in case of disagreement upon the amount of compensation to be made therefor, or upon the point or manner of such crossing and connection, the same shall be determined by arbitrators

to be appointed by a judge of the Supreme Court of this Province. CHAP. 53.

(15.) But no railway company shall avail itself of any of the powers contained in the next preceding sub-section without application to the Governor-in-Council for approval of the mode of crossing, union or intersection proposed; of which application notice in writing shall be given to any other railway company affected, by sending the same by mail or otherwise to the address of the president, superintendent, managing director, or secretary of any such railway company, and when such approval has been obtained it shall be lawful for either railway company, in case of disagreement as to the amount to be paid for compensation, to proceed for the determination of such compensation as provided above.

Governor-in-Council must approve.

(16.) Any railway company may construct a branch or branches not exceeding six miles in length from any terminus or station of their railway, whenever a by-law sanctioning the same has been passed by the municipal council of the municipality within the limits of which such proposed branch is situate; and no such branch shall, as to the quality and construction of the road, be subject to any of the restrictions contained in the special Act or in this Chapter, nor shall anything in either of the said Acts authorize the company to take for such branch any lands belonging to any party without the consent of such party first obtained.

Conditions as to constructing branch lines.

(17.) For the purpose of connecting any city, town, village, manufactory or manufactories, mine or mines, or any quarry or quarries of stone or slate, or any well or spring, with the main line of the railway of the company, or with any branch thereof, or with any railway worked or leased by the company, and for the purpose of giving increased facilities to business, or for the purpose of transporting the products of any such manufactory, mine, quarry, well or spring, it shall be lawful for the company to build, make and construct, and to work and use sidings, switches or branch lines of railway, not to exceed in any one case six miles in length: Provided always that the company shall not proceed to locate or build any branch line of more than one quarter of a mile in length under this section of this Chapter, until public notice shall have been given for six weeks in some newspaper published in the county or counties through or in which such branch line is to be made, and if no newspaper is published in such county or counties then in the nearest newspaper, that it is the intention of the company to apply to the Governor-in-Council to sanction the building of such branch

Branch lines for certain purposes.

CHAP. 53. line and to appropriate the necessary lands for that purpose, under the compulsory powers vested in them by this Chapter, or by any other Act in their behalf; nor unless the company shall, prior to the first publication of such notice, have deposited in the registry office of any city, county or part of a county in which the line or any part thereof is to be constructed the maps and plans indicating the location of the line; nor until the company shall have submitted the same to, and such maps and plans shall have been approved by, the Governor-in-Council after the expiration of the notice: And provided further, that the order of the Governor-in-Council approving the said maps and plans shall limit the time, not exceeding two years from the date of such order, within which the company may construct such branch line.

For any and every such purpose each and every company herein referred to shall have and may exercise all the powers given them with respect to their main line, by the Act incorporating the company, and the Acts amending the same or relating to the company, or the Act authorizing the construction of the main line; and this Chapter and any Act amending the same, and each and all provisions of the said Acts which are applicable to such extension, shall extend and apply to every such siding, switch or branch line of railway.

Change in location of line.

(18.) Any railway company desiring at any time to change the location of its line of railway in any particular part for the purpose of lessening a curve, reducing a gradient, or otherwise benefiting such line of railway, or for any other purpose of public advantage, may make such change; and all and every the clauses of this Chapter shall refer as fully to the part of such line of railway so at any time changed or proposed to be changed as to the original line; but no railway company shall have any right to extend its line of railway beyond the termini mentioned in the special Act.

Capital stock may be increased

(19.) The original capital stock of any railway company may be increased from time to time to any amount, but such increase must be sanctioned by a vote in person or by proxy of at least two thirds in amount of all the shareholders, at a meeting expressly called by the directors for that purpose by a notice in writing to each shareholder, served on him personally or properly directed to him and deposited in the post office at least twenty days previous to such meeting, stating the time and place and object of the meeting, and the amount of increase; and the proceedings of such meeting must be entered on the minutes of the proceedings, and thereupon the capital stock may

be increased to the amount sanctioned by such a vote: CHAP. 53.  
 Provided always, that no increase of the capital stock shall be made without an Act of the Legislature being first obtained therefor.

(20.) Railway companies shall have the right to establish telegraphic lines along the whole extent of the railway at such places along the line and with offices at such places as shall be determined upon by the directors, and rates of tariff to be from time to time approved of by the Governor-in-Council, and such telegraph may be used by the public generally in conformity with the rules and regulations that the company may adopt.

Telegraphic lines may be constructed.

## PLANS AND SURVEYS.

8. Plans and surveys shall be made and corrected as follows: Provisions as to plans and surveys.

(1.) Surveys and levels shall be taken and made of the lands through which the railway is to pass, together with a map or plan thereof, and of its course and direction, and of the lands intended to be passed over and taken therefor, so far as then ascertained, and also a book of reference for the railway, in which shall be set forth—Map and reference book.

(a.) A general description of the said lands;

(b.) The names of the owners and occupiers thereof, so far as they can be ascertained; and

(c.) Everything necessary for the right understanding of such map or plan, as may be required by the Governor-in-Council.

(2.) The map or plan and book of reference shall be examined and certified by the Commissioner of Public Works or his deputy, and a duplicate thereof, so examined and certified, shall be deposited in the office of the department of public works, and the company shall be bound to furnish copies of such map or plan and book of reference or of such parts thereof as relate to each district or county through which the railway is to pass, to be deposited in the offices of the clerks of the municipalities for such districts or counties respectively. How examined and certified, &c.

(3.) Any person may resort to such copies and make extracts therefrom or copies thereof as occasion requires, paying to the clerks of the municipality at the rate of ten cents for every hundred words. Access to copies of maps, &c.

(4.) Such map or plan and book of reference so certified, or a true copy thereof certified by the Commissioner of Public Works, or by the clerks of the municipality, shall be good evidence in any court of law and elsewhere. Certified copies to be evidence.

(5.) Any omission, misstatement or erroneous description of such lands, or of the owners or occupiers thereof, in Omissions or errors, how remedied.

**CHAP. 53.** any map or plan or book of reference, may, after giving ten days' notice to the owners of such lands, be corrected by two justices on application made to them for that purpose; and if it appears to them that such omission, mis-statement or erroneous description arose from mistake, the justices shall certify the same accordingly.

Certificate as to omissions, &c.

(6.) The certificate shall state the particulars of any such omission, and the manner thereof, and shall be deposited with the clerks of the municipality of the districts or counties respectively in which such lands are situate, and be kept by them along with the other documents to which they relate; and thereupon such map or plan or book of reference shall be deemed to be corrected according to such certificate; and the company may make the railway in accordance with the certificate.

Alterations from original survey, &c.

(7.) If any alterations from the original plan or survey are intended to be made in the line of course of the railway, a plan and section of such alterations as have been approved of by the Governor-in-Council, on the same scale and containing the same particulars as the original plan and survey, shall be deposited in the same manner as the original plan, and copies of or extracts from such plan and section so far as they relate to the several districts or counties, in or through which such alterations have been authorized to be made, shall be deposited with the clerks of the municipality of such districts and counties.

Railway not to proceed until map deposited.

(8.) Until such original map or plan or book of reference, or the plans and sections of the alterations, have been so deposited, the execution of the railway, or of the part thereof affected by the alterations, as the case may be, shall not be proceeded with.

Clerks to retain copies, &c.

(9.) The clerks of the municipality shall receive and retain the copies of the original plans and surveys, and copies of the plans and sections of alterations, and copies and extracts thereof respectively, and shall permit all persons interested to inspect any of the documents aforesaid, and to make copies of and extracts from the same, under a penalty for each default of four dollars.

Certified copies good evidence.

(10.) The copies of the maps, plans and books of reference, or of any alteration or correction thereof, or extracts therefrom, certified by the clerk of the municipality, shall be received in all courts of justice or elsewhere as good evidence of the contents thereof, and the clerk of the municipality shall give such certificate to all parties interested when required.

Deviation of line from plan.

(11.) No deviation of more than one mile from the line of the railway or from the places assigned thereto in the said map or plan and book of reference, or plans or

sections, shall be made into, through, across, under or over any part of the lands not shewn in such map or plan and book of reference, or plans or sections, or within one mile of the said line and place, save in such instances as are provided for in the special Act. CHAP. 53.

(12.) The railway may be carried across or upon the lands of any person on the line, or within the distance from such line as aforesaid, although the name of such person has not been entered in the book of reference through error or any other cause, or though some other person is erroneously mentioned as the owner of or entitled to convey, or is interested in such lands. Error in name on book of reference.

(13.) A map and profile of the completed railway and of the land taken or obtained for the use thereof, shall within six months after the completion of the undertaking be made and filed in the office of the Commissioner of Public Works, and like maps of the parts thereof, located in different districts and counties shall be filed in the registry offices for the districts and counties in which such parts are respectively situate; and any company failing or neglecting to furnish such map within the said period shall incur a penalty of two hundred dollars, and a like penalty for each and every month such failure or neglect shall continue, recoverable in Her Majesty's name in any court of competent jurisdiction. Map of railway, where to be filed.

(14.) Every such map shall be drawn on such a scale and on such paper as may from time to time be designated for that purpose by the Commissioner of Public Works, and shall be certified and signed by the president or engineer of the corporation. Scale and paper of map.

#### LANDS AND THEIR VALUATION.

9. (1.) The lands which may be taken without the consent of the proprietor thereof, shall not exceed thirty-three yards in breadth, except in places where the railway is raised more than five feet higher, or cut more than five feet deeper than the surface of the line, or where offsets are established, or where stations, depots or fixtures are intended to be erected, or goods to be delivered, and then not more than two hundred and fifty yards in length by seventy-five yards in breadth, without the consent of the person authorized to convey such lands; and the places at which such extra breadth is to be taken shall be shewn on the map or plan, or plans or sections, so far as the same may be then ascertained, but their not being so shewn shall not prevent such extra breadth from being taken, provided it be taken upon the line shewn or within the distance aforesaid from such line. What extent of land may be taken.

## CHAP. 53.

What extent of beach may be taken.

(2.) The extent of the public beach, or of the land covered with the waters of any river or lake in Canada, taken for the railway, shall not exceed the quantity limited in the next preceding sub-section.

Corporations, &c., may convey lands to company.

(3.) All corporations and persons whatever, tenants for life, guardians, curators, executors, administrators, and all other trustees whatsoever, not only for and on behalf of themselves, their heirs and successors, but also for and on behalf of those whom they represent, whether infants, issue unborn, lunatics, idiots, *femes-covert*, or other persons, seized, possessed of, or interested in any lands, may contract, sell and convey unto the company all or any part thereof: Provided always that in all cases in which the parties hereinbefore enumerated have no right in law to sell or convey the rights of property of said land, it will be necessary for the said parties to obtain from a competent judge, after due notice to parties interested, the right to sell the said land; and the said judge will give such orders as may be necessary to secure the investment of the purchase money in such a manner as he will deem necessary, according to the law of the Province, to secure the interests of the owners of said land.

Limitation of powers in certain cases.

(4.) But the powers by the next preceding sub-section conferred upon rectors in possession of glebe lands in the Province, ecclesiastical and other corporations, trustees of land for church or school purposes, or either, executors appointed by wills in which they are not invested with any power over the real estate of the testator, administrators of persons dying intestate but at their death seized of real estate, shall only extend and be exercised with respect to any of such lands actually required for the use and occupation of any railway company.

Effect of sale under preceding sub-section.

(5.) Any contract, agreement, sale, conveyance and assurance so made under the two next preceding sub-sections shall be valid and effectual in law to all intents and purposes whatsoever, and shall vest in the railway company receiving the same the fee-simple in the lands in such deed described, freed and discharged from all trusts, restrictions and limitations whatsoever; and the corporation or person so conveying is hereby indemnified for what it or he respectively does by virtue of or in pursuance of this Chapter.

Disposition of purchase money.

(6.) The company shall not be responsible for the disposition of any purchase money for lands taken by them for their purposes, if paid to the owner of the land or into court for his benefit, as hereinafter provided.

Effect of contracts made before deposit.

(7.) Any contract or agreement made by any party authorized by this Chapter to convey lands, and made

before the deposit of the map or plan and book of reference CHAP. 53.  
and before the setting out and ascertaining of the lands required for the railway, shall be binding at the price agreed upon for the same lands if they are afterwards so set out and ascertained within one year from the date of the contract or agreement, and although such land may in the meantime have become the property of a third party; and possession of the land may be taken and the agreement and price may be dealt with as if such price had been fixed by an award of arbitrators as hereinafter provided, and the agreement shall be in the place of an award.

(8.) All corporations or persons who cannot in common course of law sell or alienate any lands so set out and ascertained shall agree upon a fixed annual rent as an equivalent, and not upon a principal sum to be paid for the lands; and if the amount of the rent is not fixed by voluntary agreement or compromise it shall be fixed and all proceedings shall be regulated in the manner herein prescribed. Provisions respecting corporations.

(9.) For the payment of the said annual rent and every other annual rent agreed upon or ascertained and to be paid for the purchase of any lands, or for any part of the purchase money of any lands which the vendor agrees to leave unpaid, the railway and the tolls thereon shall be liable and chargeable in preference to all other claims and demands thereon whatsoever, the deed creating such charge and liability being duly registered in the registry office of the proper district, county, or registration division. Lien for payment of annual rent.

(10.) After one month from the deposit of the map or plan and book of reference, and from notice thereof in at least one newspaper, if there be any, published in each of the districts and counties through which the railway is intended to pass, application may be made to the owners of lands, or to parties empowered to convey lands, or interested in lands which may suffer damage from the taking of materials or the exercise of any of the powers granted for the railway; and thereupon agreements and contracts may be made with such parties touching the said lands or the compensation to be paid for the same or for the damages, or as to the mode in which such compensation shall be ascertained as may seem expedient to both parties, and in case of disagreement between them or any of them, then all questions which arise between them shall be settled as follows, that is to say:— Application to owners of lands, when made.

(11.) The deposit of a map or plan and book of reference, and the notice of such deposit, shall be deemed a general notice to all the parties of the lands which will be required for the railway and works. Deposit of plan, &c., deemed general notice.



## CHAP. 53.

Notice to party,  
and what it must  
contain.

(12.) The notice served upon the party shall contain—

(a.) A description of the lands to be taken, or of the powers intended to be exercised with regard to any lands, describing them.

(b.) A declaration of readiness to pay some certain sum or rent, as the case may be, as compensation for such lands or for such damages ; and

(c.) The name of a person to be appointed as the arbitrator of the company, if their offer be not accepted ; and such notice shall be accompanied by the certificate of a sworn surveyor for the place in which the lands are situated, disinterested in the matter, and not being the arbitrator named in the notice.

That the land, if the notice relates to the taking of land, shewn on the said map or plan, is required for the railway, or is within the limits of deviation hereby allowed.

That he knows the land, or the amount of damage likely to arise from the exercise of the powers ; and

That the sum so offered is, in his opinion, a fair compensation for the land and for the damages aforesaid.

Proceedings if  
party absent or  
unknown.

(13.) If the opposite party is absent from the district or county in which the lands lie, or is unknown, then upon application to a Judge of the Supreme Court, accompanied by such certificate as aforesaid, and by an affidavit of some officer of the company that the opposite party is so absent, or that after diligent enquiry the party on whom the notice ought to be served cannot be ascertained, the judge shall order a notice as aforesaid, but without a certificate, to be inserted three times in the course of one month in some newspaper published in the district or county ; or if there be no newspaper published therein, then in a newspaper published in some adjacent district or county.

If sum not ac-  
cepted or arbi-  
trator named.

(14.) If within ten days after the service of such notice, or within one month after the first publication thereof, the opposite party does not notify to the company his acceptance of the sum offered by them, or notify to them the name of a person whom he appoints as arbitrator, then the judge shall, on the application of the company, appoint a competent person, as the case may be, to be sole arbitrator for determining the compensation to be paid as aforesaid.

Arbitrator  
named ; third  
arbitrator.

(15.) If the opposite party within the time aforesaid notifies to the company the name of his arbitrator, then the two arbitrators shall jointly appoint a third, or if they cannot agree upon a third, then the Commissioner of Public Works shall on the application of the party or of the company (previous notice of at least two clear days having been given to the other party) appoint one of the official arbitrators to be a third arbitrator.

(16.) The arbitrators or two of them, or the sole arbitrator, being sworn before some justice of the peace for the district or county in which the lands lie, faithfully and impartially to perform the duties of their office shall proceed to ascertain the said compensation in such way as they or he, or a majority of them, deem best; and the award of such arbitrators, or any two of them, or of the sole arbitrator, shall be final and conclusive; but no such award shall be made or any official act be done by such majority except at a meeting held at a time and place of which the other arbitrator has had at least two clear days' notice, or to which some meeting at which the third arbitrator was present had been adjourned; and no notice to either of the parties shall be necessary, but each party shall be held sufficiently notified through the arbitrator appointed by him or on his behalf.

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Arbitrators' duties and award.

(17.) The arbitrators in deciding on such value or compensation are authorized and required to take into consideration the increased value that would be given to any lands or grounds through or over which the railway will pass by reason of the passage of the railway through or over the same or by reason of the construction of the railway, and to set off the increased value that will attach to the said lands or grounds against the inconvenience, loss or damage that might be suffered or sustained by reason of the company taking possession of or using the said lands or grounds as aforesaid.

Increased value of lands, remaining

(18.) If in any case where three arbitrators have been appointed the sum awarded is not greater than that offered, the costs of the arbitration shall be borne by the opposite party and be deducted from the compensation, but if otherwise they shall be borne by the company, and in either case they may if not agreed upon be taxed by the judge.

Costs, how paid.

(19.) The arbitrators, or a majority of them, or the sole arbitrator, may examine on oath or solemn affirmation the parties or such witnesses as voluntarily appear before them or him, and may administer such oath or affirmation.

Arbitrators may examine under oath.

(20.) A majority of the arbitrators at the first meeting after their appointment, or the sole arbitrator, shall fix a day on or before which the award shall be made, and if the same is not made on or before such day, or some other day to which the time for making it has been prolonged, either by the consent of the parties or by resolution of the arbitrators, then the sum offered by the company as aforesaid shall be the compensation to be paid by them.

Time within which award may be made.

(21.) If the sole arbitrator appointed by the judge, or the official arbitrator appointed by the Commissioner of Public Works, or any arbitrator appointed by the parties,

Provisions in case of death, &c., of arbitrator.

CHAP. 53. or the third arbitrator appointed by the two arbitrators, dies before the award has been made, or is disqualified, or refuses or fails to act within a reasonable time, then in the case of the sole arbitrator the judge, upon the application of either party, and in the case of the official arbitrator, the Commissioner of Public Works, upon a like application, the judge or commissioner being satisfied by affidavit or otherwise of such death, disqualification, refusal or failure, may appoint another arbitrator in his place; and in the case of any arbitrator appointed by the parties, the company and party respectively may each appoint an arbitrator in the place of his arbitrator so deceased or not acting, and in the case of a third arbitrator appointed by the two arbitrators the provisions of the sixteenth sub-section shall apply, but no recommencement or repetition of prior proceedings shall be required in any case.

Company may desist; paying costs. (22.) Any such notice for lands as aforesaid may be desisted from, and new notice given, with regard to the same or other lands, to the same or any other party; but in any such case the liability to the party first notified for all damages or costs by him incurred in consequence of such first notice and desistment shall subsist.

Personal interest sole disqualification. (23.) The surveyor or other person offered or appointed as valuator or as sole arbitrator, shall not be disqualified by reason that he is professionally employed by either party, or that he has previously expressed an opinion as to the amount of compensation, or that he is related or of kin to any member of the company, provided he is not himself personally interested in the amount of the compensation; and no cause of disqualification shall be urged against any arbitrator appointed by the judge after his appointment, but the objection must be made before the appointment, and its validity or invalidity shall be summarily determined by the judge.

Disqualification, when to be urged. (24.) No cause of disqualification shall be urged against any arbitrator appointed by the company or by the opposite party after the appointment of a third arbitrator; and the validity or invalidity of any cause of disqualification urged against any such arbitrator, before the appointment of a third arbitrator, shall be summarily determined by the judge, on the application of either party, after two clear days' notice to the other, and if the cause is determined to be valid, the appointment shall be null, and the party offering the person so adjudged to be disqualified, shall be held not to have appointed an arbitrator.

Award not invalid for want of form, &c. (25.) No award shall be invalidated from any want of form or other technical objection, if the requirements of this Chapter have been complied with, and if the award

state clearly the sum awarded, and the lands or other property, right or thing for which such sum is to be the compensation; nor shall it be necessary that the party or parties to whom the sum is to be paid be named in the award. CHAP. 53.

(26.) Upon payment or legal tender of the compensation or annual rent so awarded or agreed upon to the party entitled to receive the same, or upon the payment into court of the amount of such compensation in the manner hereinafter mentioned, the award or agreement shall vest in the company the power forthwith to take possession of the lands, or to exercise the right, or to do the thing for which such compensation or annual rent has been awarded or agreed upon; and if any resistance or forcible opposition be made by any person to their so doing, the judge may, on proof to his satisfaction of such award or agreement, issue his warrant to the sheriff of the district or county, or to a constable, as he may deem most suitable, to put the company in possession, and to put down such resistance or opposition, which the sheriff or constable, taking with him sufficient assistance, shall accordingly do. Possession, when  
may be taken;  
warrant, &c.

(27.) Such warrant may also be granted by any such judge, without such award or agreement, on affidavit to his satisfaction that the immediate possession of the lands or of the power to do the thing mentioned in the notice is necessary to carry on some part of the railway with which the company are ready forthwith to proceed. When warrant  
granted without  
award.

(b.) But no judge shall grant any warrant under this sub-section unless ten days' previous notice of the time and place when and where application for its granting will be made to him has been served upon the owner of the land, or the party empowered to convey the land, or interested in the land sought to be taken, or which may suffer damage from the taking of materials sought to be taken, or the exercise of the powers sought to be exercised, or the doing of the thing sought to be done by the railway company; nor shall any judge grant any such warrant except upon the company giving security to his satisfaction, by deposit in a chartered bank indicated by him to the credit of the company, and such person or party jointly, of a sum larger than his estimate of the probable compensation, and not less than double the amount mentioned in the notice served under sub-section twelve of this section; and the cost of the application to and of any hearing before the judge shall be borne by the railway company, unless the compensation awarded shall be less than they had declared their readiness to pay; and no part of such

CHAP. 53. deposit or of any interest thereon shall be repaid or paid to such company or paid to such owner or party without an order from such judge, which he shall have power to make in accordance with the terms of the award.

Compensation,  
when to stand in  
place of land.

(28.) The compensation for any lands which might be taken without the consent of the proprietor shall stand in the stead of such lands; and any claim to or incumbrance upon the said lands or any portion thereof, shall, as against the company, be converted into claim to the compensation or to a like proportion thereof, and they shall be responsible accordingly whenever they have paid such compensation or any part thereof to a party not entitled to receive the same, saving always their recourse against such party.

Compensation  
paid to Prothon-  
otary in certain  
cases.

(29.) If the company has reason to fear any claims or incumbrances, or if any party to whom the compensation or annual rent or any part thereof is payable refuses to execute the proper conveyance and guarantee, or if the party entitled to claim the same cannot be found, or is unknown to the company, or if for any other reason the company deems it advisable, the company may pay such compensation into the office of the prothonotary of the Supreme Court for the county in which the lands are situated, with the interest thereon for six months, and may deliver to the prothonotary of the court an authentic copy of the conveyance, or of the award or agreement if there be no conveyance; and such award or agreement shall thereafter be deemed to be the title of the company to the land therein mentioned.

What notices to  
be published.

(30.) A notice, in such form and for such time as the court appoints, shall be inserted in some newspaper, if there be any published in the district or county in which the lands are situate, and at the seat of government of the Province, which shall state that the title of the company, that is the conveyance, agreement or award, is under this Chapter, and shall call upon all persons entitled to the land or to any part thereof, or representing or being the husbands of any parties so entitled, to file their claims to the compensation or any part thereof; and all such claims shall be received and adjudged upon by the court, and the said proceedings shall forever bar all claims to the lands or any part thereof, including dower, as well as all mortgages or incumbrances upon the same; and the court shall make such order for the distribution, payment or investment of the compensation and for the securing of the rights of all parties interested as to right and justice, and according to the provisions of this Chapter and the special Act and to law appertain. The road, bed, track,

wharves, station houses and buildings of all railway companies in the Province shall be exempt from local taxation. CHAP. 53.

(31.) The costs of the proceedings or any part thereof shall be paid by the company or by any other party, as the court may order. Costs, by whom to be paid.

(32.) If such order of distribution be obtained in less than six months from the payment of the compensation into court, the court shall direct a proportionate part of the interest to be returned to the company, and if from any error, fault or neglect of the company it is not obtained until after the six months have expired, the court shall order the company to pay to the proper claimants the interest for such further period as may be right. Company, when to pay or receive interest.

(33.) Whenever stone, gravel, earth, sand or water is required for the construction or maintenance of any railway or any part thereof, the company may, in case they cannot agree with the owner of the lands on which the same are situated for the purchase thereof, cause a land surveyor duly licensed to act as such to make a map and description of the property so required, and they shall serve a copy thereof with their notice of arbitration as in the case of acquiring the roadway; and all the provisions of this Chapter as to the service of the said notice of arbitration, compensation, deeds, payment of money into court, the right to sell, the right to convey, and the parties from whom lands may be taken or who may sell, shall apply to the subject-matter of this sub-section, and to the obtaining materials as aforesaid, and such proceedings may be had by the company either for the right to the fee simple in the land from which the said material shall be taken or for the right to take material for any time they shall think necessary; and the notice of arbitration, in case arbitration is resorted to, shall state the interest and powers required. Power to take material for construction of road.

(34.) Whenever any gravel, stone, earth, sand or water is taken as aforesaid at a distance from the line of the railway, the company may lay down the necessary sidings, waterpipes or conduits and tracks over or through any lands intervening between the railway and the lands on which such material or water is found, whatever the distance may be; and all the provisions of this Chapter, except such as relate to the filing of plans and publication of notice, shall apply and may be used and exercised to obtain the right of way from the railway to the land on which such materials are situated; and such right may be acquired for a term of years or permanently as the company may think proper; and the powers in this and the next Power to make sidings, conduits, &c.

CHAP. 53. preceding sub-section, contained may at all times be exercised and used in all respects after the railway is constructed for the purpose of repairing and maintaining the railway.

When whole lot can be purchased advantageously.

(35.) Whenever for the purpose of procuring sufficient lands for stations or gravel pits, or for constructing, maintaining and using the railway, any land may be taken under the compulsory provisions of this section, and by purchasing the whole of any lot or parcel of land over which the railway is to run, or of which any part may be taken under the said provisions, the company can obtain the same at a more reasonable price or to greater advantage than by purchasing the roadway line only or only such part as aforesaid, the company may purchase, hold, use or enjoy the whole of such lot or parcel, and also the right of way thereto if the same be separated from their railway, and may sell and convey the same or any part thereof from time to time as they may deem expedient; but the compulsory provisions of this Chapter shall not apply to the taking of any portion of such lot or parcel not necessary for the purposes aforesaid.

Proceedings when more space required.

10. Whenever any railway company subject for any cause to the legislative authority of the Legislature of the Nova Scotia (and whether the provisions of this Chapter generally do or do not for other purposes apply to such company or their railway), requires at any station or place on the line of such railway more ample space for the convenient accommodation of the public and of the traffic on the railway than they then possess or can take without the consent of the proprietors thereof, the company may cause a plan to be made of the additional ground required at such station or place for the purposes aforesaid, not being in actual use for similar purposes by any other railway company (and for the purpose of making such plan shall have the powers granted to railway companies for making surveys by the seventh section of this Chapter), and may transmit such plan to the Commissioner of Public Works, with an application (supported by affidavit) on behalf of the company referring to such plan and stating that certain ground shown thereon is necessary for the purposes aforesaid, and that no other ground suitable for the purpose can be acquired at such place on reasonable terms and with less injury to private rights, and requesting the Commissioner to authorize the taking thereof for such purposes under this Chapter, of which application ten days' notice shall be given to the owner or possessor of such property; and the correctness of the plan and the truth of the allegations in such application shall be certified

by the president or one of the directors of the company CHAP. 53.  
and by their engineer, and such plan and statement shall  
be made and transmitted to the Commissioner in duplicate.

11. The Commissioner of Public Works shall inquire Certificate of  
Commissioner of  
Public Works. into the correctness of the plan and the truth of the  
allegations of the application aforesaid, and being satisfied  
thereof shall grant a certificate to that effect, and declaring  
it to be necessary in the public interest that the ground  
shown on such plan or any less quantity should be acquired  
by the company; and such certificate shall be annexed to  
one of the duplicates of the said plan and statement,  
and the other duplicate shall remain in the office of the  
Commissioner.

12. Upon the granting of such certificate as aforesaid by Effect of grant-  
ing of such cer-  
tificate. the Commissioner of Public Works, and by virtue thereof,  
the company shall have power to take the ground shown  
on the said plan as required for the purposes aforesaid,  
without the consent of the proprietors; and the company  
and all corporations or parties who could not otherwise  
convey the same to the company, shall have, with respect  
to any such ground, all the powers granted by the sections  
of this Chapter, headed, "Lands and their Valuation," to  
railway companies, corporations and parties who could not  
otherwise convey the same, with respect to lands which  
may be taken without the consent of the proprietors  
thereof: and the enactments and provisions of the said  
section, except such as refer to the map or plan and book  
of reference therein mentioned, or as limit the extent of  
land to be taken, shall apply and are hereby extended to  
the ground mentioned in the said certificate of the Commis-  
sioner of Public Works, and to all the proceedings connected  
with or consequent upon the acquiring or taking of such  
ground or any part thereof with or without the consent of  
the proprietor; and if at any time thereafter the company  
shall not require the whole or any portion of the land  
acquired under the sections last aforesaid, then such land  
as is not so required shall be sold by public auction after  
thirty days' notice thereof in a newspaper published nearest  
to the lands.

13. Any such certificate as aforesaid, purporting to be Certificate to be  
received as au-  
thentic. signed by the Commissioner of Public Works, shall be  
received as authentic in all courts of law or equity, without  
proof of such signature or other evidence, unless its  
authenticity be called in question on behalf of the crown.

14. The provisions of the four next preceding sections Application of  
four preceding  
sections. shall apply to every railway company heretofore or which  
may be hereafter incorporated, and to every railway  
heretofore constructed or now in course of construction or



CHAP. 53. hereafter to be constructed, as well as to those railways and railway companies to which this Chapter is by its provisions declared to be generally applicable.

HIGHWAYS, BRIDGES AND SIGNALS.

Railway not to be carried along highway.

15. (1.) The railway shall not be carried along an existing highway, but merely cross the same in the line of the railway, unless leave has been obtained from the proper municipal or local authority therefor; and no obstruction of such highway with the works shall be made without turning the highway so as to leave an open and good passage for carriages, and on completion of the works replacing the highway, under a penalty of not less than forty dollars for any contravention; but in either case the rail itself, provided it does not rise above nor sink below the surface of the road more than one inch, shall not be deemed an obstruction.

Not to rise more than one inch above level.

(2.) No part of the railway which crosses any highway without being carried over by a bridge or under by a tunnel, shall rise above or sink below the level of the highway more than one inch, and the railway may be carried across or above any highway within the limits aforesaid.

Height and space of bridge regulated

(3.) The span of the arch of any bridge erected for carrying the railway over or across any highway shall at all times be and be continued of the open and clear breadth and space under such arch of not less than twenty feet, and of a height from the surface of such highway to the centre of such arch of not less than twelve feet, and the descent under any such bridge shall not exceed one foot in twenty feet.

Ascent of bridges

(4.) The ascent of all bridges erected to carry any highway over any railway shall not be more than one foot in twenty feet increase over the natural ascent of the highway, and a good and sufficient fence shall be made on each side of every bridge, which fence shall not be less than four feet above the surface of the bridge.

Provision with respect to existing bridges.

(5.) Every highway or other overhead bridge or other erection or structure over any railway to which this Chapter applies, of which the lower beams or members of the superstructure are not of a sufficient height from the surface of the rails to admit of an open and clear headway of at least seven feet between the top of the highest freight cars then running on such railway and the bottom of such lower beams or members shall, when the Governor-in-Council shall pass an order therefor, be reconstructed to that effect, with suitable approaches thereto, if a bridge, at the cost of the railway company, municipality or other

owner thereof, and shall at all times thereafter be maintained at such height; and every such railway company, before using higher freight cars than those running on their railway at the time of the passing of this Chapter, or of the reconstruction as aforesaid of any such bridge or other erection or structure as the case may be, shall after having first obtained the consent of the municipality or of the owners of such bridge or other erection or structure, raise every such bridge or other erection or structure over their railway and the approaches thereto, if necessary, at the cost and charges of the railway company, so as to admit as aforesaid an open and clear headway of not less than seven feet over the top of the highest freight car then about to be used on the railway. CHAP. 53.

(b) And whenever a highway bridge or any other erection or structure shall hereafter be constructed over a railway, or whenever it shall become necessary to reconstruct any highway, bridge or other erection or structure already built over a railway, or to make large repairs to the same, the lower beams or members of the superstructure of any such highway or overhead bridge, or of any other erection or structure over any railway and the approaches thereto, shall be constructed or reconstructed at the cost of the railway company or of the municipality or other owner of the bridge, erection or structure, as the case may be, and shall at all times be maintained at a sufficient height from the surface of the rails of the railway to admit of an open and clear headway of not less than seven feet between the top of the highest freight cars then running on the railway and the lower beams or members of such bridge or other erection; and thereafter any railway company before using higher freight cars than those running on their railway at the time of the construction or reconstruction of or large repair to such bridge or other erection or structure, shall after having first obtained the consent of the municipality or of the owners of such highway bridge or other erection or structure, raise the said bridge or other erection or structure and the approaches thereto if necessary at the cost and charges of the railway company, so as to admit as aforesaid an open and clear headway of not less than seven feet over the top of the highest freight car then about to be used on the railway.

Provisions with respect to bridges to be constructed or reconstructed.

(6.) Signboards stretching across or projecting over the highway crossed at a level by any railway shall be erected and kept up at each crossing at such height as to leave sixteen feet from the highway to the lower edge of the signboard, and having the words "railway crossing" painted on each side of the signboard in letters not less than

Precautions when railway crosses highway.

CHAP. 53. six inches in length ; and for any neglect to comply with the requirements of this sub-section a penalty not exceeding forty dollars shall be incurred.

Semaphore signals to be erected at junctions, &c.

(7.) Semaphore signals or such other signals as the Governor-in-Council may approve shall be erected at junctions and such other places as the Governor-in-Council shall direct.

Penalty for neglect to erect signals.

(8.) The neglect of any company to erect signals according to the provisions of the foregoing sub-section, after receiving three months' notice from the Governor-in-Council, shall subject such company to a penalty of ten dollars for every day during which such neglect shall continue.

Gates and keepers at crossings may be ordered by council.

(9.) Upon application to the council of any municipality, setting forth that in addition to the foregoing provisions it is necessary for the security of the public that gates should be placed across any such railroad where the same shall cross any road on the same level therewith, and that persons should be stationed at such gates to open and close the same when required for the passing of the engine, the council shall investigate the application and hear evidence thereon, and if they shall be of opinion that the placing of such gates and the stationing of such persons thereat is necessary for the security of the public, shall make an order accordingly with which order the proprietor shall comply ; but no such order shall be made unless a summons, to be issued by the clerk of the municipality, setting forth the nature of the application, shall be served on the manager or person having charge of the railroad or some known agent of the proprietor thereof actually employed in and about the railroad at least fourteen days before the first day of the sitting of the council at which the investigation shall take place, requiring cause to be shewn against such application.

#### FENCES.

Fences, &c., to be erected on each side of railway.

16. (1.) Within six months after any lands have been taken for the use of the railway the company shall, if thereunto required by the proprietors of the adjoining lands, at their own costs and charges, erect and maintain on each side of the railway, fences of the height and strength of an ordinary division fence, suitable gates with proper fastenings at farm crossings of the road for the use of the proprietors of the lands adjoining the railway, and also cattle-guards at all public road crossings, suitable and sufficient to prevent cattle and animals from getting on the railway.

Liability of company for damage to cattle, &c.

(2.) Until such fences and cattle-guards are duly made the company shall be liable for all damages which may be

done by their trains or engines to cattle, horses or other animals on the railway. CHAP. 53.

(3.) After the fences or guards have been duly made and while they are duly maintained no such liability shall accrue for any such damages unless negligently or wilfully done. When exempted from liability.

(4.) If any person rides, leads or drives any horse or any other animal or suffers any such horse or other animal to enter upon such railway and within the fences and guards other than the farm crossings, without the consent of the company, he shall for every such offence forfeit a sum not exceeding forty dollars, and shall also pay to the party aggrieved all damages sustained thereby. Penalty for going on track with cattle, &c.

(5.) Whenever complaint shall be made to any justice of the peace that the provisions of this section have not been fully complied with, such justice shall forthwith notify the agent or secretary of the railway company complained of, of the substance of such complaint, and if there be no resident agent or secretary shall post up notices of such complaint in some conspicuous place on the works of such company, and if within ten days after such notice or notification such company shall not fully carry out the provisions of such section to the satisfaction of such justice, then such justice may authorize any person to make all such repairs and outlays as may be necessary fully to carry out the provisions of such section at the expense of such company, and in default of payment by such company of the expenses so incurred they may be sued therefor as for a private debt due by such company. Enforcing of preceding provisions.

(6.) No person other than those connected with or employed by the railway shall walk along the track thereof, except where the same is laid across or along a highway. Not to walk along track.

(7.) Each and every railway company heretofore incorporated, or which may hereafter be incorporated and subject to the jurisdiction of the Parliament of Canada, as well as the Government of Canada with respect to all railways constructed by or being the property or under the control of the Dominion of Canada, shall have the right on and after the first day of November in each year to enter into and upon any lands of Her Majesty, or into and upon the lands of any corporation or person whatsoever lying along the route or line of any railway, and to erect and maintain snow fences thereon, subject to the payment of such land damages, if any, as may be thereafter established in the manner provided by law with respect to such railway to have been actually suffered; provided always that any snow fences so erected shall be removed on or before the first day of April then next following. Power to erect snow fences on adjoining lands.

## CHAP. 53.

## TOLLS.

Tolls to be fixed  
by by-laws or  
otherwise.

17. (1.) Tolls shall be from time to time fixed and regulated by the by-laws of the company, or by the directors, if thereunto authorized by the by-laws or by the shareholders at any general meeting, and may be demanded and received for all passengers and goods transported upon the railway or in the steam vessels to the undertaking belonging, and shall be paid to such persons and at such places near to the railway in such manner and under such regulations as the by-laws direct.

Payments of  
tolls enforced.

(2.) In case of denial or neglect of payment on demand of any such tolls or any part thereof to such persons, the same may be sued for and recovered in any competent court, or the agents or servants of the company may seize the goods for or in respect whereof such tolls ought to be paid, and detain the same until the payment thereof; and in the meantime the said goods shall be at the risk of the owners thereof.

Goods may be  
sold for payment  
of tolls.

(3.) If the tolls are not paid within six weeks the company may sell the whole or any part of such goods, on publishing an advertisement of such sale for one week in any newspaper published nearest to the station where the tolls are payable, and out of the money arising from such sale retain the tolls payable, and all charges and expenses of such detention and sale, rendering the surplus, if any, or such of the goods as remain unsold, to the person entitled thereto. When such goods are perishable, this may be done at once.

Unclaimed goods  
may be sold.

(4.) If any goods remain in the possession of the company unclaimed for the space of twelve months, the company may thereafter and on giving public notice thereof by advertisement for six weeks in the *Royal Gazette* of the Province, and in such other newspapers as they deem necessary, sell such goods by public auction at a time and place to be mentioned in such advertisement, and out of the proceeds thereof pay such tolls and all reasonable charges for storing, advertising and selling such goods, and the balance of the proceeds, if any, shall be kept by the company for a further period of three months, to be paid over to any party entitled thereto.

Balance, how to  
be disposed of.

(5.) In default of such balance being claimed before the expiration of the period last aforesaid the same shall be paid over to the Provincial Treasury, to be applied to the general purposes of the Province until claimed by the party entitled thereto.

Tolls, how raised  
or reduced.

(6.) All or any of the tolls may by any by-law be reduced and again raised as often as deemed necessary for

the interests of the undertaking ; but the same tolls shall CHAP. 53.  
be payable at the same time and under the same circum-  
stances upon all goods and by all persons, so that no undue  
advantage, privilege or monopoly may be afforded to any  
person or class of persons by any by-laws relating to the  
tolls.

(7.) In all cases a fraction in the distance over which  
goods or passengers are transported on the railway shall be  
considered as a whole mile ; and for a fraction of a ton in  
the weight of any goods, a proportion of the tolls shall be  
demanded and taken, according to the number of quarters  
of a ton contained therein, and a fraction of a quarter of a  
ton shall be deemed and considered as a whole quarter of  
a ton. Fractional dis-  
tance, &c., how  
estimated.

(8.) The directors shall from time to time print and  
stick up or cause to be printed and stuck up in the office,  
and in all and every of the places where the tolls are to be  
collected, in some conspicuous place there, a printed board  
or paper exhibiting all the tolls payable, and particularizing  
the price or sum of money to be charged or taken for the  
carriage of any matter or thing. Rates of tolls to  
be posted up.

(9.) No tolls shall be levied or taken until approved  
of by the Governor-in-Council, nor until after two weekly  
publications in the *Royal Gazette* of the by-law establish-  
ing such tolls, and of the Order-in-Council approving  
thereof. Tolls to be ap-  
proved by Govern-  
or-in-Council.

(10.) Every by-law fixing and regulating tolls shall  
be subject to revision by the Governor-in-Council, from  
time to time, after approval thereof ; and after an Order-  
in-Council, reducing the tolls fixed and regulated by any  
by-law has been twice published in the *Royal Gazette*, the  
tolls mentioned in such Order-in-Council shall be substi-  
tuted for those mentioned in the by-law, so long as the  
Order-in-Council remains unrevoked. By-laws regulat-  
ing tolls subject  
to revision.

(11.) No by-law of any railway company by which  
any tolls are to be imposed or altered, or by which any  
party other than the members, officers and servants of the  
company are intended to be bound, shall have any force or  
effect until the same has been approved and sanctioned by  
the Governor-in-Council. By-laws to be  
approved by Govern-  
or-in-Council.

#### GENERAL MEETINGS OF SHAREHOLDERS.

18. The shareholders may assemble together at general  
meetings for purposes connected with or belonging to the  
undertaking, and at any annual general meeting may elect  
directors in the manner provided by the next succeeding  
section. Shareholders  
may hold general  
meeting.

## CHAP. 53.

## PRESIDENT AND DIRECTORS—THEIR ELECTION AND DUTIES.

Duties of president and directors.

19. (1.) A board of directors of the undertaking to manage its affairs, the number whereof shall be stated in the special Act, shall be chosen annually by a majority of the shareholders voting at such election at a general meeting, the time and place for which shall be appointed by the special Act, and if such election is not held on the day appointed, the directors shall cause such election to be held within as short a delay as possible after the day appointed, after giving due notice thereof.

Board of directors to be elected.

(2.) No person shall be admitted to vote on such subsequent day except those who would have been entitled to vote had the election been held on the day when it ought to have been held.

Who entitled to vote.

Vacancies, how filled.

(3.) Vacancies in the board of directors shall be filled in the manner prescribed by the by-laws.

Qualifications for director.

(4.) No person shall be a director unless he is a stockholder, owning stock absolutely in his own right, and qualified to vote for directors at the election at which he is chosen.

Calling general meetings, &c.

(5.) The method of calling general meetings, and the time and place of the first meeting of stockholders, for the appointment of directors, shall be determined and settled in the special Act.

Votes to be in proportion to shares.

(6.) The number of votes to which each shareholder shall be entitled on every occasion when the votes of the members are to be given, shall be in the proportion of the number of shares held by him, unless otherwise provided by the special Act.

Shareholders may vote by proxy.

(7.) All shareholders, whether resident in Canada or elsewhere, may vote by proxy, if they see fit; Provided that such proxy produce from his constituent an appointment in writing, in the words or to the effect following, that is to say:

Form.

I, \_\_\_\_\_ of \_\_\_\_\_ one of the shareholders of the \_\_\_\_\_, do hereby appoint \_\_\_\_\_ of \_\_\_\_\_, to be my proxy, and in my absence to vote or give my assent to any business, matter or thing relating to the said undertaking, that may be mentioned or proposed at any meeting of the shareholders of the said company, or any of them, in such manner as he, the said \_\_\_\_\_ thinks proper. In witness whereof, I have hereunto set my hand and seal, the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_

Votes by proxy to be valid.

(8.) The votes by proxy shall be as valid as if the principals had voted in person; and every matter or thing proposed or considered in any public meeting of the share-

holders shall be determined by the majority of votes and proxies then present and given, and all decisions and acts of any such majority shall bind the company, and be deemed the decisions and acts of the company. CHAP. 53.

(9.) The directors appointed at the last election, or those appointed in their stead in case of vacancy, shall remain in office until the next ensuing election of directors. Term of office of directors.

(10.) In case of the death, absence or resignation of any of the directors, others may be appointed in their stead by the surviving directors; but if such appointment be not made, such death, absence or resignation shall not invalidate the acts of the remaining directors. Vacancies, how to be supplied.

(11.) The electors shall at their first or at some other meeting after the election, elect one of their number to be the president of the company, who shall always when present, be the chairman of and preside at all meetings of the directors, and shall hold his office until he ceases to be a director, or until another president has been elected in his stead; and they may in like manner elect a vice-president, who shall act as chairman in the absence of the president. President and vice-president.

(12.) The directors, at any meeting at which not less than a quorum, to be settled by the special Act, are present, shall be competent to use and exercise all and any of the powers vested in them. Quorum of directors.

(13.) The act of a majority of a quorum of the directors present at any meeting regularly held, shall be deemed the act of the directors. Act of majority to bind.

(14.) No director shall have more than one vote except the chairman, who shall, in case of a division of equal numbers, have the casting vote. Chairman to have casting vote.

(15.) The directors shall be subject to the examination and control of the shareholders at their annual meetings, and be subject to all by-laws of the company, and to the orders and directions from time to time made at the annual or special meetings,—such orders and directions not being contrary to any express directions or provisions of this Chapter or the special Act. Directors subject to shareholders and by-laws.

(16.) No person holding any office, place or employment in or being concerned or interested in any contracts under or with the company, shall be capable of being chosen a director, or of holding the office of director, nor shall any person, being a director of the company, enter into, or be directly or indirectly, for his own use and benefit, interested in any contract with the company, not relating to the purchase of land necessary for the railway, or be or become a partner of any contractor with the company. Officers, &c., not eligible as directors.



## CHAP. 53.

By-laws for management of stock &c.

(17.) The directors shall make by-laws for the management and disposition of the stock, property, business and affairs of the company, not inconsistent with law, and for the appointment of all officers, servants and artificers, and prescribing their respective duties.

Directors may appoint officers.

(18.) The directors shall, from time to time, appoint such officers as they deem requisite, and shall take sufficient security, by one or more penal bonds, or by the guarantee of the Canadian Guarantee Company, or of any society incorporated for like purposes, or otherwise as they may deem expedient, from the manager and officers for the time being, for the safe keeping and accounting for by them respectively of the moneys raised by virtue of this Chapter and the special Act, and for the faithful execution of their offices, as the directors think proper.

Vice-president to act in president's absence.

(19.) In case of the absence or illness of the president, the vice-president shall have all the rights and powers of the president, and may sign all notes, bills, debentures and other instruments, and perform all acts which by the regulations and by-laws of the company or by the Acts incorporating the company are required to be signed, performed and done by the president.

Absence of president may be entered on minutes.

(20.) The directors may at any meeting require the secretary to enter such absence or illness among the proceedings of such meeting; and a certificate thereof signed by the secretary shall be delivered to any person or persons requiring the same on payment to the treasurer of one dollar, and such certificate shall be taken and considered as *prima facie* evidence of such absence or illness at and during the period in the said certificate mentioned in all proceedings in courts of justice or otherwise.

Annual accounts to be rendered.

(21.) The directors shall cause to be kept and annually on the thirty-first day of December to be made up and balanced a true, exact and particular account of the moneys collected and received by the company or by the directors or managers thereof or otherwise for the use of the company, and of the charges and expenses attending the erecting, making, supporting, maintaining and carrying on of the undertaking, and of all other receipts and expenditures of the company or the directors.

## CALLS.

How made, and after what notice.

20. (1.) The directors may from time to time make such calls of money upon the respective shareholders in respect of the amount of capital respectively subscribed or owing by them as they deem necessary, and thirty days' notice at the least shall be given of each call, and no call shall exceed the prescribed amount determined in the

special Act, or be made at a less interval than two months from the previous call, nor shall a greater amount be called in, in any one year than the amount prescribed in the special Act. CHAP. 53.

(2.) All notices of meetings or of calls upon the shareholders of the company shall be published weekly in the *Royal Gazette*, which shall be conclusive evidence of the sufficiency of such notice. Notices of meetings, how published.

(3.) Every shareholder shall be liable to pay the amount of the call so made in respect of the shares held by him to the persons, and at the times and places from time to time appointed by the company or the directors. Payments of calls how to be made.

(4.) If before or on the day appointed for payment any shareholder does not pay the amount of the call, he shall be liable to pay interest for the same at the rate of six per centum per annum from the day appointed for the payment thereof to the time of the actual payment. Interest chargeable on overdue calls.

(5.) If at the time appointed for the payment of any call any shareholder fails to pay the amount of the call, he may be sued for the same in any court of competent jurisdiction, and the same may be recovered with lawful interest from the day on which the call became payable. Amount may be recovered by suit.

(6.) In any action or suit to recover any money due upon any call, it shall not be necessary to set forth the special matter, but it shall be sufficient to declare that the defendant is the holder of one share or more, stating the number of shares, and is indebted in the sum of money to which the calls in arrear amount, in respect of one call or more upon one share or more, stating the number and amount of each of such calls, whereby an action hath accrued to the company by virtue of the special Act. Evidence necessary in actions for calls.

(7.) The certificate of proprietorship of any share shall be admitted in all courts as *prima facie* evidence of the title of any shareholder, his executors, administrators, successors or assigns to the share therein specified. Prima facie evidence of proprietorship.

(8.) But the want of such certificate shall not prevent the holder of any share from disposing thereof. Proviso as to certificate.

(9.) Any person neglecting or refusing to pay a ratable share of the calls as aforesaid for the space of two months after the time appointed for the payment thereof, shall forfeit his shares in the undertaking and all the profit and benefit thereof, which forfeiture shall go to the company for the benefit thereof. Penalty for refusal to pay calls.

(10.) No advantage shall be taken of the forfeiture unless the shares are declared to be forfeited at a general meeting of the company, assembled at any time after such forfeiture has been incurred. Forfeiture of shares, how taken advantage of.

## CHAP. 53.

Effect of forfeiture of shares.

(11.) Every such forfeiture shall be an indemnification to and for every shareholder so forfeiting against all actions, suits or prosecutions whatever, commenced or prosecuted for any breach of contract or other agreement between such shareholder and the other shareholders with regard to carrying on the undertaking.

Directors may sell forfeited shares.

(12.) The directors may sell, either by public auction or private sale, and in such manner and on such terms as to them may seem meet, any shares so declared to be forfeited, and also any shares remaining unsubscribed for in the capital stock of the company, or pledge such forfeited or unsubscribed shares for the payment of loans or advances made or to be made thereon, or of any sums of money borrowed or advanced by or to the company.

Certificate of treasurer sufficient evidence.

(13.) A certificate of the treasurer of the company that the forfeiture of the shares was declared shall be sufficient evidence of the fact and of their purchase by the purchaser; and such certificate with the receipt of the treasurer for the price of such shares shall constitute a good title to the shares, and the certificate shall be by the said treasurer enregistered in the name and with the place of abode and occupation of the purchaser, and shall be entered in the books required to be kept by the by-laws of the company; and such purchaser shall thereupon be deemed the holder of such shares, and shall not be bound to see to the application of the purchase money, nor shall his title to such shares be affected by any irregularity in the proceedings in reference to such sale, and any shareholder may purchase any shares so sold.

Interest allowed on moneys advanced.

(14.) Shareholders willing to advance the amount of their shares or any part of the money due upon their respective shares beyond the sums actually called for may pay the same, and upon the principal moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect to which such advance is made, the company may pay such interest at the legal rate of interest for the time being as the shareholders paying such sum in advance and the company agree upon; but such interest shall not be paid out of the capital subscribed.

## DIVIDENDS.

Declaration of dividends.

21. (1.) At the general meetings of the shareholders of the undertaking from time to time holden, a dividend shall be made out of the clear profits of the undertaking, unless such meetings declare otherwise.

At so much per share.

(2.) Such dividend shall be at and after the rate of so much per share upon the several shares held by the

shareholders in the stock of the company, as such meeting CHAP. 53.  
may think fit to appoint and determine.

(3.) No dividend shall be made whereby the capital of the company is in any degree reduced or impaired, or be paid out of such capital, nor shall any dividend be paid in respect of any share after a day appointed for payment of any call for money in respect thereof until such call has been paid. Not to impair capital.

(4.) The directors may in their discretion, until the railway is completed and opened to the public, pay interest at any rate not exceeding six dollars per hundred dollars per annum on all sums called up in respect of the shares from the respective days on which the same have been paid, such interest to accrue and be paid at such times and places as the directors may appoint for that purpose. Interest payable on sums called up for shares.

(5.) No interest shall accrue to the proprietor of any share upon which any call is in arrear in respect of such share or upon any other share held by the same shareholder while such call remains unpaid. No interest on shares in arrears.

#### SHARES AND THEIR TRANSFER.

22. (1.) Shares in the undertaking may by the parties be sold and disposed of by instrument in writing to be made in duplicate, one part of which shall be delivered to the directors to be filed and kept for the use of the company, and any entry thereof shall be made in a book to be kept for that purpose; and no interest or dividend on the shares transferred shall be paid to the purchaser until such duplicate is so delivered, filed and entered. Shares and their transfers.

(2.) Sales shall be in the form following, varying the names and descriptions of the contracting parties as the case may require. Shareholders may dispose of shares.

I, A. B., in consideration of the sum of \_\_\_\_\_, paid to me by C. D., hereby do sell and transfer to him \_\_\_\_\_ share (or shares) of the stock of the \_\_\_\_\_, to hold to him, the said C. D., his heirs, executors, administrators and assigns, subject to the same rules and orders, and on the same conditions that I held the same immediately before the execution hereof. And I, the said C. D., do hereby agree to accept of the said \_\_\_\_\_ share (or shares) subject to the same rules, orders and conditions. Form of sale, &c.

Witness our hands this \_\_\_\_\_ day of \_\_\_\_\_ in the year 18 \_\_\_\_\_.

(3.) The stock of the company shall be deemed personal estate, but no shares shall be transferable until all previous Stock deemed personal property.

CHAP. 53. calls thereon have been fully paid in or the said shares have been declared forfeited for the non-payment of calls thereon, and no transfer of less than a whole share shall be valid.

Transmission of shares.

(4.) If any share in the company be transmitted by the death, bankruptcy, or last will, donation or testament, or by the intestacy of any shareholder, or by any lawful means other than the transfer hereinbefore mentioned, the party to whom such share is transmitted shall deposit in the office of the company a statement in writing signed by him declaring the manner of such transmission, together with a duly certified copy or probate of such will, donation or testament, or sufficient extracts therefrom, and such other documents or proof as may be necessary; and without such proof the party shall not be entitled to receive any share of the profits of the company, nor to vote in respect of any such share as the holder thereof.

Company not to see to execution of trusts.

(5.) The company shall not be bound to see to the execution of any trust whether express, implied or constructive, to which any of the shares may be subject; and the receipt of the party in whose name any share stands in the books of the company, or if it stands in the name of more parties than one the receipt of one of the parties named in the register of shareholders, shall from time to time be a sufficient discharge to the company for any dividend or other sum of money payable in respect of the share, notwithstanding any trust to which the share may then be subject, and whether or not the company have had notice of the trust, and the company shall not be bound to see to the application of the money paid upon such receipts.

Company not to purchase stock.

(6.) The funds of the company shall not be employed in the purchase of any stock in their own or in any other company.

#### SHAREHOLDERS.

Liability of shareholders.

23. (1.) Each shareholder shall be individually liable to the creditors of the company to an amount equal to the amount unpaid on the stock held by him for the debts and liabilities thereof, and until the whole amount of his stock has been paid up; but shall not be liable to an action therefor before an execution against the company has been returned unsatisfied in whole or in part.

Municipalities may take stock.

(2.) Municipal corporations, being duly empowered so to do by the laws of the province, and subject to the limitations and restrictions by such laws prescribed, may subscribe for any number of shares in the capital stock of the company, and the mayor, warden or reeve, or other head of any such corporation holding stock to the amount

of twenty thousand dollars or upwards, shall be *ex officio* CHAP. 53.  
 one of the directors of the company, in addition to the number of directors authorized by the special Act. But in case any such municipal corporation shall appoint some person specially to the office of director in the company, such person so specially appointed shall act as director of the company *ex officio*, instead of the mayor, reeve or warden, as in this section provided.

(3.) A true and perfect account of the names and places of abode of the several shareholders shall be entered in a book to be kept for that purpose. Shareholders' book to be kept.

BY-LAWS, NOTICES, ETC.

24. (1.) All by-laws, rules and orders regularly made shall be put into writing and signed by the chairman or person presiding at the meeting at which they are adopted, and shall be kept in the office of the company; and a printed copy of so much of them as relates to or affects any party other than the members or servants of the company shall be affixed openly in every place where tolls are to be gathered, and a printed copy of so much of them as relates to the safety and liability of passengers shall be openly affixed in each passenger car, and in like manner so often as any change or alteration is made to the same; and any copy of the same, or any of them, certified as correct by the president or secretary, shall be evidence thereof in any court. By-laws to be signed by chairman.

(2.) All such by-laws, rules and orders shall be submitted from time to time to the Governor-in-Council for approval. To be affirmed by Governor-in-Council.

(3.) Copies of the minutes of proceedings and resolutions of the shareholders of the company at any general or special meeting, and of the minutes of proceedings and resolutions of the directors at their meetings, extracted from the minute-books kept by the secretary of the company, and by him certified to be true copies extracted from such minute-books, shall be evidence of such proceedings and resolutions in any court. Copies of minutes prima facie evidence.

(4.) All notices given by the secretary of the company by order of the directors shall be deemed notices by the directors and company. Notices by secretary valid.

WORKING OF THE RAILWAY.

25. (1.) Every servant of the undertaking employed in a passenger train or at a station for passengers shall wear upon his hat or cap a badge, which shall indicate his office, and he shall not without such badge be entitled to demand or receive from any passenger any fare or ticket, or to Servants to wear badge, &c.

CHAP. 53. exercise any of the powers of his office or to interfere with any passenger or his baggage or property.

Trains to start at regular hours.

(2.) The trains shall be started and run at regular hours to be fixed by public notice, and shall furnish sufficient accommodation for the transportation of all such passengers and goods as are within a reasonable time previous thereto offered for transportation at the place of starting and at the junctions of other railways and at usual stopping-places established for receiving and discharging way-passengers and goods from the trains.

Payment of fare on freight.

(3.) Such passengers and goods shall be taken, transported and discharged at, from and to such places on the due payment of the toll, freight or fare legally authorized therefor.

Liability of company.

(4.) The party aggrieved by any neglect or refusal in the premises shall have an action therefor against the company, from which action the company shall not be relieved by any notice, condition or declaration if the damage arises from any negligence or omission of the company or of its servants.

Checks to be affixed on parcels

(5.) Checks shall be affixed by an agent or servant to every parcel of baggage having a handle, loop or fixture of any kind thereupon, and a duplicate of such check shall be given to the passenger delivering the same.

Penalty for refusing checks.

(6.) If such check be refused on demand, the company shall pay to such passenger the sum of eight dollars, to be recovered in a civil action; and further, no fare or toll shall be collected or received from such passenger, and if he has paid his fare the same shall be refunded by the conductor in charge of the train.

Position of baggage cars, &c.

(7.) The baggage, freight, merchandise or lumber cars shall not be placed in rear of the passenger cars, and if any such be so placed, the officer or agent directing or knowingly suffering such arrangement, and the conductor of the train, shall severally be guilty of a misdemeanor, and be punished accordingly.

Locomotive furnished with bell, whistle, &c.

(8.) Every locomotive engine shall be furnished with a bell of at least thirty pounds' weight, and with a steam whistle.

Bells, when to be rung, &c.

(9.) The bell shall be rung or the whistle sounded at the distance of at least eighty rods from every place where the railway crosses any highway, and be kept ringing or be sounded at short intervals until the engine has crossed such highway, under a penalty of eight dollars for every neglect thereof, to be paid by the company, who shall also be liable for all damages sustained by any person by reason of such neglect, and one half of such penalty and damages shall be chargeable to and collected by the company from

the engineer having charge of such engine and neglecting CHAP. 53. to sound the whistle or ring the bell as aforesaid.

(10.) Any person in charge of a locomotive engine or acting as the conductor of a car or train of cars, who is intoxicated, shall be guilty of a misdemeanor. Intoxication of driver or conductor.

(11.) Any passenger refusing to pay his fare may, by the conductor of the train and the servants of the company, be put out of the train, with his baggage, at any usual stopping-place or near any dwelling-house, as the conductor elects, the conductor first stopping the train, and using no unnecessary force. Penalty for refusing to pay fare.

(12.) Any person injured while on the platform of a car, or on any baggage, wood or freight car, in violation of the printed regulations posted up at the time in a conspicuous place inside of the passenger cars then in the train, shall have no claim for the injury, provided room inside of such passenger cars sufficient for the proper accommodation of the passengers was furnished at the time. Injury to passengers in certain cases.

(13.) No passenger shall be entitled to carry or require the company to carry upon their railway, aquafortis, oil of vitriol, gunpowder, nitro-glycerine or any other goods which in the judgment of the company may be of a dangerous nature, and if any person sends by the said railway any such goods without at the time of so sending the said goods distinctly marking their nature on the outside of the package containing the same, and otherwise giving notice in writing to the station-master or other servant of the company with whom the same are left, he shall forfeit to the company the sum of five hundred dollars for every such offence. Goods of dangerous nature.

(14.) The company may refuse to take any package or parcel which they suspect to contain goods of a dangerous nature, or may require the same to be opened to ascertain the fact. Dangerous goods may be refused.

ACTIONS FOR INDEMNITY ; AND FINES AND PENALTIES AND THEIR PROSECUTION.

26. (1.) All suits for indemnity for any damage or injury sustained by reason of the railway, shall be instituted within six months next after the time of such supposed damage sustained, or if there be continuation of damage, then within six months next after the doing or committing such damage ceases, and not afterwards; and the defendants may plead this Chapter and the special Act, and the provisions thereof, and the special matter in evidence at any trial to be had thereupon, and may prove that the same was done in pursuance of and by the authority of this Chapter and the special Act. Limitation of actions for damages.



CHAP. 53. (2.) All fines and forfeitures imposed by part first of this Chapter, or the special Act, or by any by-law, except those for the levying and recovering of which special provision is herein made, shall be recovered in a summary manner before any one or more justice or justices of the peace for the district, county or place where the act occurred.

Contravention of Act a misdemeanor.

(3.) The fact of any contravention of this Chapter or of the special Act by the company being a misdemeanor, and punishable accordingly, shall not exempt the company from the forfeiture by this Chapter and the special Act of the privileges conferred on them by the said Acts, if by the provisions thereof or by-law the same be forfeited by such contravention.

#### GENERAL PROVISIONS.

Proviso as to carriage of H. M. mails, &c.

27. (1.) Her Majesty's mail, Her Majesty's naval or military forces or militia, and all artillery, ammunition, provisions or other stores for their use, and all policemen, constables or others travelling on Her Majesty's service, shall at all times, when required by the Postmaster General of Canada, the Commander of the Forces, or any person having the superintendence and command of any police force, and with the whole resources of the company if required, be carried on the railway, on such terms and conditions, and under such regulations, as the Governor-in-Council may make.

Exclusive use of telegraph when required.

(2.) The company shall, when required so to do by the Governor-in-Council or any person authorized by him, place any electric telegraph, and the apparatus and operators they may have, at the exclusive use of the Government, receiving therefor reasonable compensation for such service.

Government telegraph may be constructed.

(3.) The Governor may at any time cause a line or lines of electric telegraph to be constructed along the line of the railway for the use of the Government, and for that purpose may enter upon and occupy so much of the lands of the company as may be necessary for the purpose.

Further enactments by Parliament.

(4.) Any further enactments which the Parliament of Canada may hereafter make for the carriage of the mail or Her Majesty's forces, and other persons and articles as aforesaid, or the tolls therefor, or in any way respecting the use of any electric telegraph or other service to be rendered to the Government, shall not be deemed an infringement of the privileges intended to be conferred by this Chapter or the special Act.

Tenders to be invited for contracts.

(5.) No contracts for works of construction or maintenance of the railway (except works of ordinary repair, or of immediate necessity), except such as shall be authorized by

the Governor-in-Council, shall be entered into until after CHAP. 53. tenders for such works respectively have been invited by public notice therefor, given for at least four weeks in some newspaper published in the place nearest to that at which the work is required to be done, but the company shall not be compelled to accept any such tender.

(6.) If the construction of the railway be not commenced, and ten per cent. on the amount of the capital be not expended thereon, within three years after the passing of the special Act, or if the railway is not finished and put in operation in ten years from the passing of such special Act, the corporate existence and powers of the company shall cease. Existence, &c., of company when to cease.

(7.) After the opening of the railway or any part thereof to the public, and within the first fifteen days after the opening of each session of the Legislature, an account shall be annually submitted to the Legislature containing a detailed and particular account, attested upon oath of the president, or in his absence of the vice-president, or of a person empowered by the company to make such statement, of the moneys received and expended by the company, and a classified statement of the passengers and goods transported by them, with an attested copy of the last annual statement. Annual account submitted to legislature.

(8.) No further provisions which the Legislature may hereafter make with regard to the form or details of such account, or the mode of attesting or rendering the same, shall be deemed an infringement of the privileges hereby granted to the company. Form, &c., of account may be varied.

(9.) The Legislature may at any time annul or dissolve any corporation formed under this Chapter; but such dissolution shall not take away or impair any remedy given against any such corporation, its shareholders, officers or servants, for any liability which had been previously incurred. Corporation may be dissolved.

(10.) Nothing herein contained shall affect in any manner the rights of Her Majesty, or of any person, or of any body politic, corporate or collegiate, such only excepted as are herein mentioned. Saving of Her Majesty's rights, &c.

## RAILWAY STATISTICS.

28. (1.) In this and the five next following sections the term "company" means a company heretofore or hereafter incorporated for the purpose of constructing, maintaining or working a railway in the Province, or connecting the Province with any other or others of the Provinces by any Act of the Legislature, and includes any individual or individuals not incorporated, who are owners Definition of words. "Company."

**CHAP. 53.** or lessees of a railway in the Dominion, or parties to an agreement for working a railway in the Dominion.

"Person."

(2.) The term "person" includes a body corporate.

Company to furnish annual returns.

29. Every company shall annually prepare returns of their capital in accordance with the form contained in schedule one to this Chapter, and a copy of such returns, signed by the president or other head officer of the company resident in Canada, and by the officer of the company responsible for the correctness of such return or any part thereof, shall be forwarded by the company to the Commissioner of Public Works, not later than two months after the end of the calendar year, together with a copy of the then last annual return of the traffic and working expenditure which every such company is required to keep, in accordance with the provisions of their respective Acts of incorporation, to be verified in manner and form aforesaid, and furnished according to form shown in schedule two of this Chapter, or in such form as the Commissioner of Public Works shall approve of or prescribe. Any company which fails to forward the said returns in accordance with the provisions of this section, shall be liable to a penalty not exceeding fifty dollars for every day during which such default continues.

Monthly returns of traffic to be

30. Every company shall monthly prepare returns of their traffic for the last preceding month, in accordance with the form contained in schedule three to this Chapter, and a copy of such returns, signed by the officer of the company responsible for the correctness of such return, shall be forwarded by the company to the Commissioner of Public Works within twenty-one days from the last day in each month to which the said returns shall relate; and another copy of each of such returns, signed by the same officer, shall be posted up by the company within the same time, and kept posted up for seven days in some conspicuous place in the most public room in the head office of the company in the Province, and so as the same can be perused by all comers; and free access thereto shall be allowed to all comers during the usual hours of business at such office.

Penalty for false returns.

31. (1.) If any return which is required by the two next preceding sections is false in any particular to the knowledge of any person who signs the same, such person shall be liable on conviction thereof to a penalty not to exceed two hundred and fifty dollars.

Penalties, how recoverable.

(2.) All penalties imposed by this or the two next preceding sections shall be recoverable by the person suing for the same for his own use and benefit in any court having jurisdiction in civil cases to the amount.

32. The Commissioner of Public Works shall lay CHAP. 53. before both Houses of the Legislature, within twenty-one days from the commencement of each session, the returns made and rendered to him, in pursuance of section twenty-nine of this Chapter. Returns to be laid before legislature.

33 All returns made in pursuance of any of the provisions of this Chapter, shall be privileged communications, and shall not be evidence in any court whatsoever. Returns to be privileged communications.

## PART SECOND.

34. No railway or portion of any railway shall be opened for the public conveyance of passengers until one month after notice in writing of the intention to open the same has been given by the company to whom the railway belongs to the Governor-in-Council, and until ten days after notice in writing has been given by the company to the Governor-in-Council of the time when the railway or portion of railway will be in the opinion of the company, sufficiently completed for the safe conveyance of passengers, and ready for inspection. Railway not to be opened until after notice.

35. If any railway or portion of a railway be opened without such notices the company to whom such railway belongs shall forfeit to Her Majesty the sum of two hundred dollars for every day during which the same continues open, until the notices have been duly given and have expired. Penalty for contravention.

36. The Governor-in-Council upon receiving such notification shall direct one or more of the engineers attached to the Department of Public Works to examine the railway proposed to be opened, and all bridges, culverts, tunnels, road crossings and other works and appliances connected therewith, and also all engines and other rolling stock intended to be used thereon, and if the inspecting engineer or engineers report in writing to the Governor-in-Council that in his or their opinion the opening of the same would be attended with danger to the public using the same by reason of the incompleteness of the works or permanent way or the insufficiency of the establishment for working such railway together with the ground of such opinion, the Governor-in-Council, and so from time to time as often as such engineer or engineers after further inspection thereof so report, may order and direct the company to whom the railway belongs to postpone such opening, not exceeding one month at any one time, until it appears to the Governor-in-Council that such opening may take place without danger to the public. Engineers to make examinations of road, &c.

## CHAP. 53.

Penalty for opening contrary to order.

37. If any railway or any portion thereof be opened contrary to such order or direction of the Governor-in-Council the company to whom the railway belongs shall forfeit to Her Majesty the sum of two hundred dollars for every day during which the same continues open contrary to such order or direction.

Order, when voiding on company.

38. No such order shall be binding upon any railway company unless therewith is delivered to the company a copy of the report of the inspecting engineer or engineers on which the order is founded.

Railway may be condemned in certain cases.

39. The Governor-in-Council, whenever he receives information to the effect that any bridge, culvert, viaduct, tunnel, or any other portion of any railway, or any engine, car or carriage used or for use on any railway, is dangerous to the public using the same from want of repair, insufficient or erroneous construction, or from any other cause, or whenever circumstances may arise which in his opinion render it expedient, may direct any engineer or engineers aforesaid to examine and inspect the railway or any portion thereof, or of the works connected therewith, or the engines and other rolling-stock in use thereon, or any portion thereof; and upon the report of the engineer or engineers may condemn the railway or any portion thereof, or any of the rolling stock or other appliances used thereon, and may require any change or alteration therein or in any part thereof, or the substitution of any new bridge, culvert, viaduct or tunnel, or of any material for the said railway; and thereupon the company to which such railway belongs, or the company using, running or controlling the same, shall after notice thereof in writing signed by the Commissioner of Public Works and Mines, proceed to make good or remedy the defects in the said portions of the railway, or in the locomotive, car or carriage which have been so condemned, or shall make such change, alteration or substitution hereinbefore referred to as has been required in manner aforesaid by the Governor-in-Council.

Engineer may forbid running of trains.

40. If in the opinion of any such engineer it is dangerous for trains or vehicles to pass over any railway or any portions thereof until alterations, substitutions or repairs have been made thereon, or that any particular car, carriage or locomotive should be run or used, the said engineer may forthwith forbid the running of any train or vehicle over such railway or portion of railway, or the running or using of any such car, carriage or locomotive by delivering or causing to be delivered to the president, managing director or secretary or superintendent of the company owning, running or using such railway, or to any officer having the management or control of the running of

trains on such railway, a notice in writing to that effect, CHAP. 53.  
with his reasons therefor, in which he shall distinctly  
point out the defects or the nature of the danger to be  
apprehended.

41. The inspecting engineer shall forthwith report the  
same to the Governor-in-Council, who may either confirm, Engineer to re-  
port to Governor-  
in-Council.  
modify or disallow the act or order of the inspecting  
engineer, and such confirmation, modification or disallowance  
shall be duly notified to the railway company affected  
thereby.

42. Any engineer or engineers so appointed as aforesaid  
to inspect any railway or works may at all reasonable Power of engi-  
neer to examine  
works, &c.  
times, upon producing his or their authority if required,  
enter upon and examine the said railway and the stations,  
fences or gates, road crossings, cattle guards, works and  
buildings, and the engines, cars and carriages belonging  
thereto.

43. (1.) Every railway company and the officers and Company to  
afford necessary  
information.  
directors thereof shall afford to the inspecting engineer  
or engineers such information as may be within their  
knowledge and power in all matters inquired into by them,  
and shall submit to such inspecting engineer or engineers  
all plans, specifications, drawings and documents relating  
to the construction, repair or state of repair of such railway  
or any portion thereof, whether a bridge, culvert or  
other part.

(2.) Any such inspecting engineer shall have the right, Company to  
convey engineer  
free.  
whilst engaged in the business of such inspection, to travel  
without charge on any of the ordinary trains running on  
the railway, and to use the telegraph wires and machinery  
in the offices of or under the control of any such railway  
company.

(3.) The operators or officers employed in the telegraph Telegraph opera-  
tors to obey his  
orders.  
offices of or under the control of the company shall without  
unnecessary delay obey all orders of any such inspecting  
engineer for transmitting messages; and any such operator  
or officer refusing or neglecting so to do shall forfeit for  
every such offence the sum of forty dollars.

(4.) The authority of any such inspecting engineer Evidence of engi-  
neer's authority.  
shall be sufficiently evidenced by instructions in writing,  
signed by the Commissioner of Public Works.

44. The Governor-in-Council may authorize or require Provision as to  
construction, &c,  
of bridges.  
any railway company to construct fixed and permanent  
bridges, or to substitute such bridges in the place of the  
swing, draw or movable bridges on the line of such railway;  
within such time as the Governor-in-Council directs; and  
for every day after the period so fixed during which the  
company uses such swing, draw or movable bridges the

CHAP. 53. company shall forfeit and pay to Her Majesty the sum of two hundred dollars; and it shall not be lawful for any railway company to substitute any swing, draw or movable bridge in the place or stead of any fixed or permanent bridge already built and constructed, without the previous consent of the Governor-in-Council.

Restrictions as to crossing highway on level.

45. In any case where a railway is constructed or authorized to be constructed across any turnpike road, street or other public highway on the level; the Governor-in-Council may authorize and require the company to whom such railway belongs, within such time as he directs, to carry such road, street or highway either over or under the said railway by means of a bridge or arch, instead of crossing the same on the level, or to execute such other works as under the circumstances of the case appear to the Governor-in-Council the best adapted for removing or diminishing the danger arising from such level crossing; and all the provisions of law at any such time applicable to the taking of land by railway companies and its valuation and conveyance to them and to the compensation therefor, shall apply to the case of any land required for the construction of any works for effecting the alteration of such level crossing.

Notice to repair level crossing.

46. Whenever any level crossing on any railway shall be out of repair the chief officer of the municipality or other local division having jurisdiction over the highway so crossed may serve a notice upon the company in the usual manner, requiring the repair to be forthwith made; and if the company shall not forthwith make the same, such officer may transmit a copy of the notice so served to the Commissioner of Public Works; and thereupon it shall be the duty of the Governor-in-Council with all possible despatch to appoint a day for an examination into the matter; and the committee shall by mail give notice to such chief officer and to the company of the day so fixed; and upon the day so named such crossings shall be examined by an engineer appointed by the Governor-in-Council; and any certificate under his hand shall be final on the subject so in dispute between the parties; and if the said engineer determines that any repairs are required he shall specify the nature thereof in his certificate and direct the company to make the same; and the company shall thereupon with all possible despatch comply with the requirement of such certificate; and in case of default the proper authority in the municipality or other local division within whose jurisdiction the said crossing is situate may make such repairs and may recover all costs, expenses and outlays in the premises by action against the company in

any court of competent jurisdiction as money paid to the company's use: Provided always that neither this section nor any proceeding had thereunder shall at all affect any liability otherwise attaching to such company in the premises.

47. The Governor-in-Council or the inspecting engineer or engineers may limit the number of times or rate of speed of running of trains or vehicles upon any railway or portion of railway, until such alterations or repairs as he or they may think sufficient have been made, or until such time as he or they think prudent; and the company owning, running or using such railway shall comply forthwith with any such order of the Governor-in-Council or inspecting engineer, upon notice thereof as aforesaid; and for every act of non-compliance therewith every such railway company shall forfeit to Her Majesty the sum of two thousand dollars.

48. Every railway company shall as soon as possible and at least within forty-eight hours after the occurrence upon the railway belonging to such company of any accident attended with serious personal injury to any person using the same, or whereby any bridge, culvert, viaduct or tunnel on or of the railway has been broken or so damaged as to be impassable or unfit for immediate use, give notice thereof to the Governor-in-Council; and if any company wilfully omits to give such notice, such company shall forfeit to Her Majesty the sum of two hundred dollars for every day during which the omission to give the same continues.

49. The Commissioner of Public Works may at any time direct the Provincial Engineer to make a special report with respect to any accident on the railway, which accident has caused loss of life or personal injury to any person, and in such case the Provincial Engineer shall have power to hold an investigation, summon and examine such witnesses as he may consider necessary under oath, and the Commissioner of Public Works shall cause such report to be made public at such time and in such manner as he thinks expedient.

#### CORONERS.

50. With respect to coroners' inquests on the bodies of persons whose deaths may have been caused by accidents on or connected with railways, the following provisions shall have effect:—

(1.) Where a coroner holds an inquest upon the body of any person whose death may have been caused by any accident of which notice is required by this Chapter to be

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Speed of trains, &c., regulated.

Notice of accident, when to be given.

Special report on accident by Provincial Engineer.

Provision with respect to coroners' inquests.



CHAP. 53. given to the Commissioner of Public Works, the coroner shall adjourn such inquest when the majority of the jury think it necessary so to adjourn such inquest to enable the Provincial Engineer wherever practicable, or some other properly qualified person appointed by the Commissioner of Public Works, to be present to watch the proceedings.

(2.) The coroner at least four days before holding the adjourned inquest shall send to the Commissioner of Public Works notice in writing of the time and place of holding such adjourned inquest.

(3.) The coroner before the adjournment may take evidence to identify the body, and may order the interment thereof.

(4.) The Provincial Engineer, or such other person so appointed, shall be at liberty at any such inquest to examine any witness, subject nevertheless to the order of the coroner.

(5.) Where evidence is given at an inquest at which the Provincial Engineer, or such other person so appointed, is not present, of any neglect as having caused or contributed to the accident, or of any defect in or about the railway appearing to the coroner or jury to require a remedy, the coroner shall send to the engineer notice in writing of such neglect or default.

(6.) Any person having a personal interest in or employed in or in the management of the railway in which the accident occurred, or any relative of the deceased person upon whose body the inquest is to be held, shall not be qualified to serve on the jury impanelled on the inquest; and it shall be the duty of the constable or other officer not to summon any person disqualified under this provision, and it shall be the duty of the coroner not to allow any such person to be sworn or to sit on the jury.

Every person who fails to comply with the provisions of this section shall be guilty of an offence against this Chapter, and shall be liable to a fine not exceeding two hundred dollars.

Inspection not to  
relieve company  
from liability.

51. No inspection had under this Chapter nor anything in this Chapter contained, or done or ordered or omitted to be done, or ordered under or by virtue of the provisions of this Chapter, shall relieve or be construed to relieve any railway company of or from any liability or responsibility resting upon it by law, either towards Her Majesty or towards any person, or the wife or husband, parent or child, executor or administrator, tutor or curator, heir or other personal representative, of any person, for anything done or omitted to be done by such company, or for any

wrongful act, neglect or default, misfeasance, malfeasance CHAP. 53. or nonfeasance of such company, or in any manner or way to lessen such liability or responsibility, or in any way to weaken or diminish the liability or responsibility of any such company under the laws in force in the province in which such liability or responsibility arises.

52. Every railway company shall as soon as possible after the receipt of any order or notice of the Commissioner of Public Works or inspecting engineer, give cognizance thereof to each of its officers and servants in one or more of the ways mentioned in the sixtieth section of this Chapter. Orders to be notified to officers, &c.

53. All orders of the Governor-in-Council shall be considered as made known to the railway company by a notice thereof signed by the Commissioner of Public Works and mailed to the president, vice-president, managing director, secretary or superintendent of the company, or at the office of the company; and orders of the inspecting engineer or engineers shall be deemed to be made known to the railway company by a notice thereof, signed by the engineer or engineers and delivered or mailed as above mentioned. What deemed sufficient notice.

54. Every railway company shall within one month after the first days of January and July in each and every year make to the Governor-in-Council, under the oath of the president, secretary or superintendent of the company, a true and particular return of all accidents and casualties (whether to life or property) which have occurred on the railway of the company during the half year next preceding each of the said periods respectively, setting forth: Return of accidents semi-annually.

(1.) The causes and natures of such accidents and casualties.

(2.) The points at which they occurred, and whether by night or day.

(3.) The full extent thereof and all the particulars of the same; and

(4.) Shall also at the same time return a true copy of the existing by-laws of the company, and of their rules and regulations for the management of the company and of their railway.

55. The Governor-in-Council may order and direct from time to time the form in which such returns shall be made up, and may order and direct any railway company to make up and deliver to them from time to time, in addition to the said periodical returns, returns of serious accidents occurring in the course of the public traffic upon the railway belonging to such company, whether attended with personal injury or not, in such form and manner as Form of return ordered by Governor-in-Council

**CHAP. 53.** the Governor-in-Council deem necessary and require for their information with a view to the public safety.

Penalty for neglect to make return.

56. If such returns so verified be not delivered within the respective times herein prescribed, or within fourteen days after the same have been so required by the Governor-in-Council, every company making default shall forfeit to Her Majesty the sum of one hundred dollars for every day during which the company neglects to deliver the same.

Returns privileged communications.

57. All such returns shall be privileged communications, and shall not be evidence in any court whatsoever.

#### TRAFFIC ARRANGEMENTS.

Companies may agree respecting traffic.

58. (1.) The directors of any railway company may at any time make agreements or arrangements with any other company or owners of railways, for the regulation and interchange of traffic passing to and from their railways, and for the working of the traffic over the said railways respectively, or for either of those objects separately, and for the division and apportionment of tolls, rates and charges in respect of such traffic, and generally in relation to the management and working of the railways, or any of them, or any part thereof, and of any railway or railways in connection therewith, for any term not exceeding twenty-one years, and to provide either by proxy or otherwise for the appointment of a joint committee or committees for the better carrying into effect any such agreement or arrangement, with such powers and functions as may be considered necessary or expedient, subject to the consent of two thirds of the stockholders voting in person or by proxy.

Must afford facilities for forwarding traffic.

(2.) But every railway company shall, according to their respective powers, afford all reasonable facilities to any other railway company for the receiving and forwarding and delivering of traffic upon and from the several railways belonging to or worked by such companies respectively, and for the return of carriages, trucks and other vehicles; and no company shall give or continue any preference or advantage to or in favor of any particular company, or any particular description of traffic, in any respect whatsoever; nor shall any company subject any particular company or any particular description of traffic to any prejudice or disadvantage in any respect whatsoever; and every railway company having or working a railway which forms part of a continuous line of railway, or railway and steamer connection, or which intersects any other railway, or which has any terminus, station or wharf of the one near any terminus, station or wharf of the other, shall afford all reasonable facilities for receiving and

forwarding by the one railway all the traffic arriving by the other, without any unreasonable delay, and without any preference or advantage, or prejudice or disadvantage, and so that no obstruction may be offered in the using of such railway as a continuous line of communication, and so that all reasonable accommodation may at all times by the means aforesaid be mutually afforded by and to the said railway companies; and any agreement made between any two or more railway companies contrary to the foregoing provisions shall be unlawful, null and void.

(3.) Any railway company granting any facilities to any incorporated express company shall grant equal facilities on equal terms and conditions to any other incorporated express company demanding the same. Must afford equal facilities to express companies.

(4.) If any officer, servant or agent of any railway company, having the superintendence of the traffic at any station or depot thereof, refuses or neglects to receive, convey or deliver at any station or depot of the company for which they may be destined, any passenger, goods or things, brought, conveyed or delivered to him or such company for conveyance over or along their railway from that of any other company intersecting or coming near to such first-mentioned railway, or in any way wilfully contravenes the provisions of the second sub-section of this section, such first-mentioned railway company, or such officer, servant or agents personally, shall for each such neglect or refusal incur a penalty not exceeding fifty dollars over and above the actual damages sustained; which penalty may be recovered with costs in a summary way before any justice of the peace, by the railway company or any other party aggrieved by such neglect or refusal, and to and for the use and benefit of the company or other party so aggrieved. Penalty for neglect or refusal to forward traffic.

(5.) For the purposes of the four next preceding sub-sections, the word "traffic" includes not only passengers and their baggage, goods, animals and things conveyed by railway, but also cars, trucks, and vehicles of any description adapted for running over any railway; the word "railway" includes all stations and depots of the railway and steamers connected therewith; and a railway shall be deemed to come near another when some part of the one is within one mile of some part of the other. Interpretations of "traffic."

(6.) Whenever any railway company is permitted by the Act of incorporation of such company to amalgamate by arrangement with any other company, the contract for such amalgamation shall when adopted and passed by such companies be communicated to the Governor-in-Council for Amalgamation of companies.

CHAP. 53. approval, and such approval shall be announced by notice under the signature of the Commissioner of Public Works in the *Royal Gazette*.

Failure to make  
traffic arrange-  
ments.

(7.) In the event of two or more companies failing to make the traffic arrangements required by this Chapter to the satisfaction of the Governor-in-Council, such companies may be required by the Governor-in-Council to make such arrangements within a specified reasonable time, and if the companies fail to agree as to the terms of such arrangements within the term so specified, then the Governor-in-Council shall have the power to adjust, decide and settle all disputes in relation thereto.

#### RAILWAY CONSTABLES.

Appointment of  
constables on  
railway lines.

59. (1.) The municipal council or warden of any municipality, on the application of the board of directors of any railway company whose railway passes within the local jurisdiction of such municipality, or on the application of any clerk or agent of such company thereto authorized by such board, may in their or his discretion appoint any persons recommended to them for that purpose by such board of directors, clerk or agent, to act as constables on and along such railway, and every person so appointed shall take an oath or make a solemn declaration in the form or to the effect following, that is to say :

Oath of office.

“ I, A. B., having been appointed a constable to act upon “ and along (*here name the railway*), under the provisions “ of (*here insert the title of this Chapter*), do swear that I will “ well and truly serve Our Sovereign Lady the Queen, in the “ said office of constable, without favor or affection, malice “ or ill-will, and that I will, to the best of my power, cause “ the peace to be kept, and prevent all offences against the “ peace, and that while I continue to hold the said office, I “ will, to the best of my skill and knowledge, discharge the “ duties thereof faithfully, according to law. So help me “ God.”

Constables' pow-  
ers, &c., and how  
extensive.

(2.) And such oath or declaration shall be administered by any such warden or justice of the peace, and every constable so appointed, and having taken such oath or made such declaration, shall have full power to act as a constable for the preservation of the peace, and for the security of persons and property against felonies and other unlawful acts, on such railway and on any of the works belonging thereto, and on and about any trains, roads, wharves, quays, landing-places, warehouses, lands and premises belonging to such company, whether the same be in the county, city, town, parish, district, or other local

jurisdiction within which he was appointed, or in any other place through which such railway passes, or in which the same terminates, or through or to which any railway passes which may be worked or leased by such railway company, and in all places not more than one quarter of a mile distant from such railway or railways; and shall have all such powers, protections and privileges for the apprehending of offenders, as well by night as by day, and for doing all things for the prevention, discovery and prosecution of felonies and other offences, and for keeping the peace, which any constable duly appointed has within his constable-wick; and it shall be lawful for any such constable to take such persons as may be punishable by summary conviction for any offence against the provisions of this Chapter, or of any of the Acts or by-laws affecting any such railway, before any justice or justices appointed for any county, city, town, parish, district or other local jurisdiction within which any such railway may pass; and and every such justice shall have authority to deal with all such cases as though the offence had been committed and the person taken within the limits of his own local jurisdiction.

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(3.) Any warden of the municipality or any justice of the peace may dismiss any such constable who may be acting within their several jurisdictions: and the board of directors of such railway company, or any clerk or agent of such company thereto authorized by such board, may dismiss any such constable who may be acting on such railway; and upon every such dismissal all powers, protections and privileges belonging to any such person by reason of such appointment shall wholly cease; and no person so dismissed shall be again appointed or act as constable for such railway without the consent of the authority by which he was dismissed.

Dismissal of such constables

(4.) Every such railway company shall cause to be recorded in the office of the clerk of the municipality for every county, city, town, parish, district or other local jurisdiction wherein such railway or railways may pass the name and designation of every constable so appointed at their instance, the date of his appointment, and the authority making it, and also the fact of every dismissal of any such constable, the date thereof and the authority making the same, within one week after the date of such appointment or dismissal, as the case may be; and the clerk of the municipality shall keep such record in a book, to be open to public inspection, charging such fee or fees as the Governor-in-Council may from time to time authorize, and in such form as the Governor-in-Council may from time to time direct.

Record of appointment to be kept.

**CHAP. 53.** (5.) Every such constable who is guilty of any neglect or breach of duty in his office of constable shall be liable on summary conviction thereof within any county, city, district or other local jurisdiction wherein such railway may pass, to a penalty of not more than eighty dollars, the amount of which penalty may be deducted from any salary due to such offender if such constable be in receipt of a salary from the railway company, or to imprisonment for not more than two months in the gaol of such county, city, district or other local jurisdiction.

Penalty for resisting constables. (6.) Every person who assaults or resists any constable appointed as aforesaid in the execution of his duty, or who incites any person so to do, shall for every such offence be liable on summary conviction to a penalty of not more than eighty dollars or to imprisonment for not more than two months.

## GENERAL PROVISIONS.

Company to make by-laws for employees. 60. (1.) Every railway company shall make such by-laws, rules and regulations to be observed by the conductors, engine-drivers and other officers and servants of the company, and by all other companies and persons using the railway of such company, and such regulations with regard to the construction of the carriages and other vehicles to be used in the trains on the railway of the company, as are requisite for ensuring the perfect carrying into effect of the provisions of this Chapter and the orders and regulations of the Governor-in-Council.

By-laws may be altered, &c. (2.) The company may from time to time repeal or alter such by-laws and make others, provided that such by-laws be not repugnant to the provisions of this Chapter or the Act incorporating the company, or any Act or Acts amending any of them.

Form and authentication. (3.) And such by-law shall be reduced into writing and shall have affixed thereto the common seal of the company.

Penalty for breach of by-law. (4.) Any of the conductors, engine drivers and other officers and servants of the company, or other railway companies using any railway, offending against any such by-law shall forfeit for every such offence a sum not exceeding forty dollars, such forfeiture to be imposed by the company in such by-law as a penalty for every such offence.

Summary interference in certain cases. (5.) If the infraction or non-observance of any such by-law by any of the classes in the next preceding subsection mentioned be attended with danger or annoyance to the public or hindrance to the company in the lawful use of the railway, it shall be lawful for the company summarily to interfere, using no violence or unnecessary

force, to obviate or remove such danger, annoyance or hindrance, and that without prejudice to any penalty incurred by the infraction of any such by-law. CHAP. 53.

(6.) No such by-law shall have force or effect unless or until it has been approved by the Governor-in-Council. Approved by Governor-in-Council.

(7.) The substance of any such by-law when approved as aforesaid, if it affects any officer or servant of the company, may be proved by proving the delivery of a copy to or its receipt by such officer or servant; and if it affects any other railway company using the railway shall be painted on boards or printed on paper and pasted on boards, and hung up and affixed, and continued on the front or other conspicuous part of every wharf or station belonging to the company, according to the nature or subject matter of such by-laws respectively, and so as to give public notice thereof to the parties interested therein or affected thereby; and such boards shall from time to time be renewed as often as the by-laws thereon or any part thereof shall be obliterated or destroyed; and no penalty imposed by any such by-law shall be recoverable unless the same shall have been published and kept published in manner aforesaid. Notification of by-law, how made public.

(8.) Such by-laws when so confirmed shall be binding upon and be observed by all parties mentioned in the fourth sub-section of this section, and shall be sufficient to justify all persons acting under the same; and for proof of the publication of any such by-laws affecting only any other railway company using the railway, it shall be sufficient to prove that a printed paper or painted board containing a copy of such by-laws was affixed and continued in manner by this section directed, and in case of its being afterwards displaced or damaged then that such paper or board was replaced as soon as conveniently might be. What parties bound by by-law.

61. Any railway company may by a by-law impose upon any officer, servant, or person who before the contravention of such by-law has had notice thereof and is employed by the company, a forfeiture to the company of not less than thirty days' pay of such officer or servant for any contravention of such by-law, and may retain any such forfeiture out of the salary or wages of the offender. Forfeiture for contravention of by-law.

62. The notice of the by-law or of any order or notice of the Governor-in-Council, or of the inspecting engineer or engineers, may be proved by proving the delivery of a copy thereof to the officer, servant or person, or that he signed a copy thereof, or that a copy thereof was posted in some place where his work or his duties, or some of them, were to be performed. Notice of by-law, order, &c., how proved.



## CHAP. 53.

When a full defence for company.

Navigation not to be impeded.

Railways across rivers, &c., regulated.

Plan of wharf, bridge, &c., approved by Governor-in-Council.

Exception as to special Acts.

Train to stop before crossing drawbridge.

Best communicating apparatus to be used.

63. Such proof, with a proof of the contravention, shall be a full answer and defence for the company in any suit for the recovery of the amount so retained, and such forfeiture shall be over and above any penalty under this Chapter.

64. No such company shall cause any obstruction in or impede the free navigation of any river, stream or canal to or across or along which their railway is carried.

65. If the railway be carried across any navigable river or canal the company shall leave openings between the abutments or piers of their bridge or viaduct over the same, and shall make the same of such clear height above the surface of the water, or shall construct such draw-bridge or swing-bridge over the channel of the river or over the whole width of the canal, and shall be subject to such regulations as to the opening of such swing-bridge or drawbridge as the Governor-in-Council from time to time make.

66. It shall not be lawful for any such company to construct any wharf, bridge, pier or other work upon or over any navigable river, lake or canal, or upon the beach or bed or lands covered with the waters thereof, until they have first submitted the plan and proposed site of such work to the Governor-in-Council, and the same has been approved; and no deviation from such approved site or plan shall be made without the consent of the Governor-in-Council.

67. Nothing contained in the two next preceding sections of this Chapter shall be construed to limit or affect any power expressly given to any railway company by its special Act of incorporation or any special Act amending the same.

68. In all cases where a railway passes any drawbridge or swing-bridge over a navigable river, canal or stream which is subject to be opened for the purposes of navigation, the trains shall in every case be stopped at least three minutes to ascertain from the bridge tender that the said bridge is closed and in perfect order for passing, and in default of so stopping during the full period of three minutes the said railway company shall be subject to a fine or penalty of four hundred dollars.

69. Every railway company which runs trains upon the railway for the conveyance of passengers shall provide and cause to be used in and upon such trains such known apparatus and arrangements as best afford good and sufficient means of immediate communication between the conductors and the engine drivers of such trains while the trains are in motion, and good and sufficient means of

applying by the power of the steam engine or otherwise CHAP. 53.  
 at the will of the engine driver, or other person appointed  
 to such duty, the brakes to the wheels of the locomotive  
 or tender, or both, or of all or any of the cars or carriages  
 composing the trains, and of disconnecting the locomotive,  
 tender and cars or carriages from each other by any such  
 power or means, and also such apparatus and arrangements  
 as best and most securely place and fix the seats or chairs  
 in the cars or carriages, and shall alter such apparatus and  
 arrangements or supply new apparatus and arrangements  
 from time to time as the Governor-in-Council may order.

70. Every railway company which fails to comply with any of the provisions contained in the next preceding section of this Chapter shall forfeit to Her Majesty a sum not exceeding two hundred dollars for every day during which such default continues. Penalty for non-compliance with preceding section.

71. Every railway company shall station an officer at every point on their line crossed on a level by any other railway, and no train shall proceed over such crossing until signal has been made to the conductor thereof that the way is clear. Further precaution at level crossings.

72. Every locomotive or railway engine or train of cars on any railway shall, before it crosses the track of any other railway on a level, be stopped for at least the space of one minute. Where one track crosses another on a level.

73. No locomotive or railway engine shall pass in or through any thickly peopled portion of any city, town or village at a speed greater than six miles per hour, unless the track is properly fenced. Or runs through city, &c.

74. Whenever any train of cars is moving reversely in any city, town or village, the locomotive being in the rear, the company shall station on the last car in the train a person who shall warn parties standing on or crossing the track of such railway of the approach of such train; and for any contravention of the provisions of this and the three next preceding sections the company shall incur a penalty of one hundred dollars. Or is moving reversely.

75. If the Governor-in-Council order any railway company to erect at or near or in lieu of any level crossing of a turnpike road or other public highway a footbridge or footbridges over their railway for the purpose of enabling persons passing on foot along such turnpike road or public highway to cross the railway by means of such bridge or bridges, then from and after the completion of such footbridge or footbridges so required to be erected, and while the company keeps the same in good and sufficient repair, such level crossing shall not be used by foot passengers on the said turnpike road or public Footbridge to be used by passengers.

CHAP. 53. highway, except during the time when the same is used for the passage of carriages, carts, horses or cattle along the said road.

Cattle, &c., not  
be at large on  
highway.

76. No horses, sheep, swine or other cattle shall be permitted to be at large upon any highway within half a mile of the intersection of such highway with any railway on grade, unless such cattle are in charge of some person or persons to prevent their loitering or stopping on such highway at such intersection.

Such cattle, &c.,  
may be impound-  
ed.

77. All cattle found at large in contravention of the last preceding section may, by any person finding the same at large, be impounded in the nearest pound to the place where the same are so found, and the pound keeper with whom the same are so impounded shall detain the same in the like manner and subject to the like regulations as to the care and disposal thereof, as in the case of cattle impounded for trespass on private property.

If killed, owners  
to have no action

78. No person, any of whose cattle being at large contrary to the provisions of section seventy-six are killed by any train at such point of intersection, shall have any action against any railway company in respect to the same being so killed.

Crossing to be  
fenced.

79. At every road and farm crossing on the grade of the railway the crossing shall be sufficiently fenced on both sides so as to allow the safe passage of the trains.

Ground to be  
cleared of thistles,  
&c.

80. Every railway company shall cause all thistles and other noxious weeds growing on the cleared land or ground adjoining the railway and belonging to such company to be cut down and kept constantly cut down, or to be rooted out of the same.

Consequence of  
neglect to comply  
with last  
section.

81. If any railway company fails to comply with the requirements of the last preceding section within twenty days after they have been required to comply with the same by notice from the mayor or chief officer of the municipality of the township, county or district in which the land or ground lies, or from any justice of the peace therein, such company shall thereby incur a penalty of two dollars to the use of the municipality for each day during which they neglect to do anything which they are lawfully required to do by such notice, and the said mayor or officer, or justice of the peace, may cause all things to be done which the said company were lawfully required to do by such notice, and for that purpose may enter by himself and his assistants or workmen upon such lands or grounds, and may recover the expenses and charges incurred in so doing, and the said penalty with costs of suit in any court having jurisdiction in civil cases to the amount sought to be recovered.

82. The interest of the purchase money or rent of any real property acquired or leased by any railway company and necessary to the efficient working of such railway, and the price or purchase money of any real property or thing without which the railway could not be efficiently worked, shall be considered to be part of the expenses of working such railway, and shall be paid as such out of the earnings of the railway.

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Interest of purchase money deemed working expenses.

83. Every person wilfully obstructing any inspecting engineer in the execution of his duty shall, on conviction before a justice of the peace having jurisdiction in the place where the offence has been committed, forfeit and pay for every such offence any sum not exceeding forty dollars, and in default of payment of any penalty so adjudged immediately, or within such time as the said justice of the peace appoints, the same justice, or any other justice having jurisdiction in the place where the offender resides, may commit the offender to prison for any period not exceeding three months; but such commitment shall be determined on payment of the amount of the penalty; and every such penalty shall be returned to the municipal treasurer in the usual manner.

Penalty for obstructing inspecting engineer.

84. If any officer or servant of or person employed by any railway company wilfully or negligently contravenes any by-law or regulation of the company lawfully made and in force, or any order or notice of the railway committee, or of the inspecting engineer or engineers, of which a copy has been delivered to him or has been posted up or open to his inspection in some place where his work or his duties, or any of them, are to be performed, then if such contravention causes injury to any property or to any person, or exposes any property or any person to the risk of injury, or renders such risk greater than it would have been without such contravention, although no actual injury occurs, such person convicted thereof shall in the discretion of the court before whom the conviction is had be punished by fine not exceeding four hundred dollars, and in default of payment of the fine to be imprisoned for a term not to exceed two years.

Punishments for contravening by-laws, &amp;c.

85. If such contravention does not cause injury to any property or person, nor expose any person or property to the risk of injury, nor make such risk greater than it would have been without such contravention, then the officer, servant or other person guilty thereof, shall thereby incur a penalty not exceeding the amount of thirty days' pay, nor less than fifteen days' pay of the offender from the company, in the discretion of the justice of the peace before whom the conviction is had; and such penalty shall be

Penalty in certain cases, how recoverable.

**CHAP. 53.** recoverable with costs before any one justice of the peace having jurisdiction where the offence has been committed, or where the offender is found, on the oath of one credible witness other than the informer.

Application of penalty. 86. One moiety of such penalty shall belong to Her Majesty for the public uses of the Province and the other moiety to the informer, unless he be an officer or servant of or person in the employ of the company, in which case he shall be a competent witness and the whole penalty shall belong to Her Majesty for the uses aforesaid.

Penalty paid by company may be deducted from salary. 87. The company may in all cases under the three next preceding sections pay the amount of the penalty and costs, and recover the same from the offender or deduct it from his salary or pay.

Penalties in other cases. 88. In the case of any violation of any of the provisions of this Chapter, for which no special penalty is provided, the person or company so violating any of the said provisions shall forfeit and pay the sum of one hundred dollars for each and every such violation and for each and every day's continuation of such violation, and this penalty and all penalties provided by this Chapter for the recovery of which no other provision has been made, may be sued for and recovered by the Provincial Engineer as a private debt in any court having in any case jurisdiction for the like amount.

Application of other fines and penalties. 89. All the fines, forfeitures, and penalties, recoverable under this Chapter, the application whereof is not otherwise provided for, shall be paid into the treasury of the Province of Nova Scotia, but penalties for the contravention of any by-law made under the authority of this Chapter, shall be paid into the treasury of the company.

Collection of penalties, enforced, how. 90. The collection of any of the penalties provided for in this Chapter, where the same shall be incurred by any Railway company, may be enforced by a sale of any of the company's property, notwithstanding the existence of any mortgage, lien, encumbrance, or deed of trust, to secure the payment of any liability.

Compensation by arbitration. 91. In the case of any railway of which the Governor-in-Council is authorized by statute or by any agreement or contract to assume the ownership on paying the value of the same or compensation for any part or the whole of the outlay made thereon, and it is provided by the statute, agreement, or contract, that the amount of such value or compensation is to be ascertained by arbitration, the Governor-in-Council of Nova Scotia may enter into possession and hold such railway and assume the ownership thereof, and be vested with all the rights, property and powers intended by any such statute, agreement, or contract,

to be conferred on the Governor-in-Council on the assumption by the Governor-in-Council of the ownership of such railway, four weeks' notice being first given to the company in possession of the said railway, or its president, manager, secretary or agent in this Province, or elsewhere, of the name of the arbitrator appointed by the Governor-in-Council. This enactment shall not take away the right of any company to the compensation to which such company may be entitled on the award being made under the provisions of any such statute, agreement, or contract, as is heretofore referred to.

92. When the notice mentioned in the next preceding section has been given on the part of the Governor-in-Council, and the company or officer, or the proprietor or proprietors, of any railway coming within the provisions of said section, shall refuse, or for four weeks after the giving of such notice neglect, to name an arbitrator on the part of such company or proprietors, such arbitrator shall be appointed by the Chief Justice of the Supreme Court of Nova Scotia, and shall for all purposes be considered and held to be the arbitrator appointed by or on behalf of the company so notified, or of the proprietors of any railway coming within the provisions thereof.

93. If the third arbitrator or umpire whose appointment is provided for in any statute, agreement or contract, or in this Chapter, shall not be appointed, or his appointment not notified to the Governor-in-Council for thirty days after the other two arbitrators have been appointed (and his appointment notified to the Governor-in-Council), such third arbitrator or umpire shall be appointed by the other two arbitrators by writing under their hands, and in the event of their failure so to appoint within a period of one month, shall be appointed by the Chief Justice of the Supreme Court of Canada; but this section shall not be applicable to any company or railway whose charter, act of incorporation, or agreement with the Province, provide for the appointment of a third arbitrator in some other way.

94. All or any of the arbitrators referred to in the three next preceding sections, and also a reasonable number of experts or other persons forming their staff or staffs, shall have the right at all or any time or times, until the making and publication of their award, to travel on any of the trains which may from time to time pass over any of the railways in respect of which such arbitrators are to make their valuation or award, free of all charge, and shall be carried from station to station in such manner as to enable them to make full examination of such railways and

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Proviso in case of neglect to name arbitrator.

Proviso in case of neglect to appoint umpire.

Arbitrators, &c., entitled to travel on trains.

CHAP. 53. all the appurtenances. Any person or company who shall refuse to said arbitrators, or any of them, or their attendants, the facilities mentioned in this section, shall pay a penalty for each offence of four hundred dollars to any person who may sue for the same.

Witnesses com- 95. The arbitrators or any of them shall have power  
pellable to at- to issue summons for the attendance of witnesses and for  
tend, &c. the production of documents, and to examine witnesses  
under oath, and every such summons shall have the same  
effect as a subpoena or subpoena *duces tecum* issued out of  
the Supreme Court of Nova Scotia, and non-compliance  
with any such summons shall be attended with the like  
consequences, or as disobedience of any such subpoena or  
subpoena *duces tecum*.

Witnesses en- 96. Witnesses summoned to attend before said arbi-  
titled to fees. trators shall have the same rights in respect of fees as  
witnesses in the Supreme Court.

Witness residing 97. All the provisions of any statute now in force  
abroad, how ex- relating to the issuing of commissions for taking the  
amined. depositions of witnesses residing out of the Province, shall  
apply to all or any proceedings before such arbitrators and  
for this purpose the proceedings before any such arbitrator  
or arbitrators shall be deemed to be a civil action in said  
court, and on any such commission being returned, the  
same, together with any deposition taken thereunder, shall  
be transmitted by the prothonotary to the arbitrators.

Affidavit &c., how 98. Any affidavit, order, rule, deposition or other  
to be entitled. proceeding in the Supreme Court of Nova Scotia, touching  
or relating to the issuing of a commission, or the taking  
of evidence thereunder, for the purpose of the arbitrators,  
may be entitled as in the said Court, and in the cause of  
"The Queen on behalf of the Government of Nova Scotia,  
*versus* The ——— Company," (naming the company or  
proprietors whose railway forms the subject of the arbi-  
tration.)

#### INTERPRETATION CLAUSE.

What "railway 99. In the construction of the provisions of this  
company" shall Chapter from section thirty-four inclusive to the end  
include. of the Chapter, the expression "railway company" or  
"company" shall include any person being the owner or  
lessee of or a contractor working any railway constructed  
or carried on under the powers of an Act of Parliament.

RETURNS BY RAILWAY COMPANIES.

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Schedules.

SCHEDULE ONE.

Return in pursuance of Chapter 53 of the Revised Statutes "Of Railways," by the Railway Company of their authorized share and loan capital, and the sums received in respect of their ordinary capital and preferential capital and debenture stock or funded debt on the 31st December, 18 , specifying the rate per cent. of the dividends for the year 18 on each of the said capitals, showing also the loans outstanding on the 31st December, 18 , classified according to the several rates per cent. of interest, and the capital subscribed to other undertakings, whether such undertakings are on lease to or worked by the subscribing company, or are independent.

Name of Company.	Authorized Capital up to the 31st December, 18 , including capital authorized as subscriptions to other undertakings, whether such other undertakings are on lease to or worked by the subscribing company, or are independent.			Paid-up Stock and Share Capital at 31st December, 18 , including subscriptions paid up to other undertakings.								
	By Shares.	By Loans.	Total.	Ordinary.	Rate per cent. of Dividend.	Guaranteed.	Guaranteed Rate of Dividend.	Rate of Dividend paid.	Preferential.	Preferential Rate of Dividend.	Rate of Dividend paid.	Total paid-up Stock and Share Capital at 31st December, 18 .
	\$	\$	\$	¢	¢	¢	¢		¢	¢	¢	¢

SCHEDULE TWO.

STATEMENTS OF ACCOUNTS FOR THE YEAR ENDING.....

No. 1.—Share Capital authorized, issued, and remaining to be issued.

Authority.	Share capital authorized.	Share capital issued.	Balance unissued.



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No. 2.—*Capital raised by Debenture Stock.*

Authority.	Debenture stock authorized.	Debenture stock issued.	Balance un-issued.

DR. No. 3.—*Receipts and Expenditures on Capital Account.* CR.

To Expenditure—	By Receipts—
	Share Capital..... Debenture Stock.....

No. 4.—*Details of Capital Expenditure in Year ending.....*

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No. 5.—*Capital Powers available to meet further Expenditure.*

Share Capital unissued, as per Account No. 1..... Debenture Stock Capital unissued, as per Account No. 2.....
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No. 6.—Return Rolling Stock.

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	Locomotive.		Coaching, Merchandize and Minerals.									
	Engines.	Tenders.	Total.	1st Class.	2nd Class.	Composite.	Post Office.	Box Cars.	Platform Cars.	Snow Plows.	Total.	Grand Total.
Stock at _____												
Stock at _____												
Increase during the year,												
Decrease during the year,												

DR.

No. 7.—Revenue Account.

CR.

Expenditure.	Receipts.
To Maintenance of Way, (See Abstract A)	By passengers.....
Locomotive Power... (See Abstract B)	Parcels.....
Car repairs..... (See Abstract C)	Mails.....
Traffic expenses..... (See Abstract D)	Freight.....
General charges. ... (See Abstract E)	Rents.....
Law expenses.....	Mileage.....
Compensation, .....	

No. 8.—Abstracts of Expenditure.

A.—MAINTENANCE OF WAY, WORKS, ETC.	
Salaries, Travelling Expenses, and General Superintendence.....	
Wages of Foremen and Laborers.....	
Rails.....	
Spikes, Fish-Plates and Bolts.....	
Sleepers.....	
Repairs to Points and Crossings.....	
Repairs to Bridges and Culverts.....	
Repairs to Road Crossings, Fences and Gates, &c.....	
Repairs to Stations and Offices.....	
Ballasting.....	
Repairs to Wharves.....	
Repairs to Sidings, Slopes, &c.....	
Miscellaneous Expenses.....	
Total as per Account No. 7.....	

<b>B.—LOCOMOTIVE POWER.</b>		
Salaries and General Superintendence.....		
Wages of Enginemen and Firemen (Running Expenses).....		
Wages of Cleaners and Labourers.....	Ditto	
Coal and Wood.....	Ditto	
Water .....	Ditto	
Oil, Tallow and Waste.....	Ditto	
Small Stores .....	Ditto	
Wages .....	(Repairs and Renewals)	
Materials .....	Ditto	
 <i>Less</i> Old Materials sold, and Engines Ballasting.....		
Total as per Account No. 7.....		
<b>C.—REPAIRS AND RENEWALS OF CARS.</b>		
Salaries and General Superintendence (Passenger Cars).....		
Wages .....	Ditto	
Materials .....	Ditto	
Salaries and General Superintendence...(Freight Cars) .....		
Wages .....	Ditto	
Materials .....	Ditto	
 <i>Less</i> Old Materials sold.....		
Total as per Account No. 7.....		
<b>D.—TRAFFIC EXPENSES.</b>		
Salaries of Traffic Superintendent, Agents, &c.....		
Wages of Conductors and Brakemen.....		
Wages of Pointsmen and Porters.....		
Fuel and General Stores .....		
Car Oil .....		
Stationery, Printing and Tickets.....		
Advertising and Time Tables.....		
Miscellaneous Expenses .....		
Travelling and other Expenses.....		
Clothing.....		
 Total as per Account No. 7.....		
<b>E.—GENERAL CHARGES.</b>		
Provision for Directors' Fees .....		
Auditor's Fee.....		
Expenses of Head Offices.....		
Travelling Expenses.....		
Stationery and Printing.....		
Insurance.....		
Advertising .....		
Rent, &c.....		
 Total as per Account No. 7.....		

DR. No. 9.—*Net Revenue Account.*

CR. CHAP. 53.

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DR. No. 10.—*General Balance Sheet.*

CR.

To				By Cash at banker's.....
“				“ General stores, stock of
“				materials on hand.....
“				“ Traffic accts. due Co.....
“ Sundry outstanding accts...				“ Sundry outstanding accts..

No. 11.—*Mileage Statement at.....*

	Miles.
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No. 12.—*Statement of Train Mileage.*

Passenger Trains .....	
Accommodation Trains.....	
Freight Trains .....	
Special Trains (Ballasting, &c.) .....	

*Certificate of Auditor.*

I have examined the foregoing Accounts and Vouchers, and certify that they are a correct abstract of the books.

.....Auditor.

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SCHEDULE THREE.

..... *Railway.*

RETURN of Traffic for Month ending 18 , and  
the corresponding Month, 18 .

Date.	Passengers.	Freight and Live Stock.	Mails and Sundries.	Total.	Miles open.
18					
18					

Increase.....  
Decrease .....

*Aggregate Traffic from.....18....*

Date.	Passengers.	Freight and Live Stock.	Mails and Sundries.	Total.	Miles open.
18					
18					

## CHAPTER 54.

## OF ARRANGEMENTS BETWEEN RAILWAY COMPANIES AND THEIR CREDITORS.

1. In this Chapter the term "company" shall mean Explanation of terms. any railway company constituted by any Act of the Legislature of Nova Scotia. The term "action" shall include suits or other proceedings. The term "judgment" shall include decrees, orders or rules. The term "share" shall include stock. The term "person" shall include corporations. The term "creditor" shall include any mortgagee or holder of debentures, stock or loan notes. The term "court" shall mean the Supreme Court of this Province; and the term "Gazette" shall mean the *Royal Gazette* of Nova Scotia.

2. A company may propose a scheme of arrangement Scheme of arrangement. between the company and their creditors (with or without provisions for settling and defining any rights of shareholders of the company as among themselves, and for raising if necessary additional share and loan of capital, or either of them), and may file the same in the court.

3. After the filing of the scheme the court may, on the application of the company, on summons or motion in a summary way restrain any action against the company on such terms as the court thinks fit. Company may restrain actions.

4. Notice of the filing of the scheme shall be published in the *Gazette* and in two other newspapers published in the City of Halifax. Notice of filing scheme.

5. After such publication of notice, no execution, attachment or other process against the property of the company shall be available or be enforced without leave of the court, to be obtained on summons or motion in a summary way. Executions, &c., not available.

6. The scheme shall be deemed to be assented to by the creditors when it is assented to in writing by three fourths in value of such creditors. Assent of creditors.

7. The scheme shall be deemed to be assented to by the preference shareholders of the company when it is assented to in writing as follows:— Assent of preference shareholders.

If there is only one class of preference shareholders, then by three fourths in value of that class; and if there are more classes of preference shareholders than one, then by three fourths in value of each such class.

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Assent of ordinary shareholders.

8. The scheme shall be deemed to be assented to by the ordinary shareholders of the company when it is assented to at an extraordinary general meeting of the company, specially called for that purpose in the usual way.

Proviso.

9. Provided that the assent to the scheme of any class of holders of mortgages, bonds or debentures stocks, or of any class of preference shareholders, shall not be requisite, in case the scheme does not prejudicially affect any right or interest of such class.

Confirmation of scheme.

10. If at any time within four months after filing of the scheme, or within such extended time as the court from time to time thinks fit to allow, the directors of the company consider the scheme to be assented to as by this Chapter required, they may apply to the court by petition in a summary way for confirmation of the scheme. Notice of any such application when intended shall be published in the *Gazette* and in two other Halifax newspapers for at least two months previous to such application.

Court may confirm after hearing.

11. After hearing the directors and any creditors, shareholders or other parties whom the court thinks entitled to be heard on the application, the court if satisfied that the scheme has been assented to as required by this Chapter, and that no sufficient objection to the scheme has been established, may confirm the scheme.

Scheme to be enrolled.

12. The scheme when confirmed shall be enrolled in the court, and thenceforth the same shall be binding and effectual to all intents, and the provisions thereof shall, against and in favor of the company and all parties assenting thereto or bound thereby, have the like effect as if they had been specially enacted by the Legislature.

Notice of confirmation.

13. Notice of the confirmation and enrollment of the scheme shall be published in the *Gazette* and two other Halifax newspapers.

Copies of scheme

14. The company shall at all times keep at their office printed copies of the scheme when confirmed and enrolled, and shall sell such copies to all persons desiring to buy the same at a reasonable price, not exceeding twenty-five cents for each copy.

## CHAPTER 55.

## OF MUNICIPAL AID IN THE CONSTRUCTION OF RAILWAYS.

1. In this Chapter, unless the context precludes such construction, the term "polling district" shall mean a polling district known as such in the election of members to serve in the General Assembly; "rate-payer" shall mean any male inhabitant of a municipality of the full age of twenty-one years, whose name appears on the assessment roll last made up for the polling district in which such person resides, and the term "railway company" or "company" shall mean any railway company now incorporated or hereafter to be incorporated by Act of the Legislature of this Province, and legally organized for the transaction of business.

Meaning of terms in this Chapter.

2. Any municipality may, when it shall have been so decided by a majority of the ratepayers thereof voting at a poll taken as hereinafter provided, take stock in any railway company, and may pay up the full amount of such stock subscription in the bonds of the municipality; and such bonds shall be executed by commissioners duly appointed for that purpose, and paid over to the treasurer or other proper officer of the company, in full for all claims on account of such stock subscription.

Municipalities may take stock in railway companies.

3. Whenever and so soon as fifty rate-payers of any municipality shall make a request in writing to the sheriff of the county to hold a poll for the purposes of this Chapter, specifying the amount of stock proposed to be taken, he shall within three weeks thereafter appoint a day to take the vote of the rate-payers on the question of taking stock to the proposed amount in the company, and shall give fifteen days' public notice thereof by hand-bills posted up in at least three of the most public places in each polling district in the municipality, and by advertisement in one or more newspapers, if any, published therein; and he shall appoint a presiding officer, a clerk and an inspector for each polling district, who shall be sworn to perform their respective duties faithfully. Such oaths may be administered by the sheriff or by any justice of the peace for the county.

Sheriff to hold poll, &c.

4. The voting shall be open, and the presiding officer shall ask each voter presenting himself, after his name shall have been recorded by the clerk, the question, "Are you in favor of the municipality taking stock?" and the voter shall answer "yes" or "no," and the answer shall be

Voting, &c.



**CHAP. 55.** entered by the clerk accordingly. The list of voters for each polling district shall include the rate-payers on the assessment roll last made up for each polling district. Any voter about whose right to vote the inspector may entertain a doubt may be required to take the following oath :

Oath.

"I, A. B., do solemnly swear that I am the person named as A. B. on the assessment roll of polling district number . . . . . in the municipality of . . . . . ; that I am of the full age of twenty-one years, and a rate-payer residing in this polling district; and that I have not since this day voted elsewhere in this municipality. So help me God."

Poll to be open,  
how long, &c.

5. The poll shall be open from eight o'clock in the forenoon until five o'clock in the afternoon; and at the close of the poll the book kept by the clerk shall be sealed up and returned by the presiding officer to the sheriff with all convenient speed. The sheriff shall within one week thereafter at the court house in the county where such vote has been taken publicly open the books and declare the state of the poll.

Election law ap-  
plicable.

6. The laws in force in the Province for conducting elections of members to serve in the General Assembly shall be applicable to the poll to be taken under this Chapter, so far as may be practicable and when not inconsistent with the provisions of this Chapter.

Expenses.

7. The necessary expenses incurred under the authority of this Chapter shall be a charge upon the municipality.

Commissioners  
to be appointed,  
&c.

8. After the vote of the rate-payers is declared, and if a majority be found in favor of taking the stock, the warden of the municipality shall without delay call a special meeting of the council, giving at least two weeks' public notice of the same by advertisement in a newspaper, if any, published in the county; and if there be no newspaper published therein then by a written or printed notice mailed to each member of the council at least two weeks before the holding of such meeting; at which meeting the council shall appoint three commissioners to draw up and execute bonds or debentures of and on behalf of the municipality for such sum in the aggregate as the rate-payers shall have voted to take in the stock of such railway company.

Bonds.

9. The bonds shall be coupon bonds of the denominations of one thousand, five hundred, and one hundred dollars respectively, and shall bear interest at the rate of seven per cent. per annum, payable half yearly at the office of the treasurer of the municipality, free from local taxation, and shall be redeemable in thirty years. The bonds and

coupons attached shall be signed by the commissioners CHAP. 55.  
upon receipt of notice from the Provincial Secretary that  
the company have satisfied the Governor-in-Council as to  
their ability to build and complete the railway which such  
company was incorporated to build, and that they have  
become parties to an agreement with the proper officer of  
the government to build and complete such railway. The  
clerk of the municipality shall deliver such bonds to the  
president of the company, who shall thereupon deliver to  
him stock certificates of the company to the amount so  
taken and subscribed for by the municipality.

10. The stock certificates shall be deposited by the Stock certificates  
clerk of the municipality with such officers as may be  
appointed by the council to receive the same, who are  
hereby authorized to receive such dividends or interest as  
may at any time be declared payable by the company on  
account of such stock, and to pay the same forthwith to  
the treasurer of the municipality.

11. The bonds and interest thereon shall be a charge Municipality to  
upon the municipality; and all funds estimated to be be assessed for  
required for the payment of interest and sinking fund shall the payment of  
be raised by an annual tax on real and personal property bonds, &c.  
therein, to be collected in the same manner as the  
municipality rates; and the clerk of the municipality shall  
annually add to the sum voted for the general municipal  
purposes a sum sufficient for the payment of such interest  
and sinking fund; and the sum so required for interest and  
sinking fund shall be deposited at least annually in a  
chartered bank in this Province, subject to the order of the  
treasurer of the municipality wherein such interest and  
sinking fund shall have been assessed, to be applied by  
such treasurer to the purposes of this Chapter. If, through  
failure or neglect, such sum so required for such interest  
and sinking fund be not so added, assessed and deposited  
as in this section provided, the Supreme Court shall, upon  
proof by affidavit of such failure or neglect, and upon  
motion of any party interested, amerce such municipality  
for the sum required to provide such interest and sinking  
fund. For the purposes of such amercement the provisions  
of Chapter 58 of the Revised Statutes, "Of Municipal  
Assessments," shall apply. No informality in the proceed-  
ings taken under the authority of this Chapter shall be  
held to affect the legality of such proceedings or the  
liability of the municipality; provided the clerk of the  
municipality or warden shall certify under his hand that a  
majority of the rate-payers voting as aforesaid are in  
favour of the municipality taking stock as aforesaid.

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Municipality to  
be represented  
by director.

12. The municipality shall, while holding the before mentioned amount of stock, be entitled to representation on the board of directors of the company by one director, who shall be appointed annually by the council. Such appointment may be made by ballot or otherwise, and in case the place of such director becomes vacant by resignation or otherwise, another director shall be appointed by the council; and at all general or special meetings of the company such director shall represent the stock of the municipality, and shall be entitled at such meetings to cast not less than ten votes or such number as may be allowed by the by-laws of the company.

Stock may be  
sold at auction.

13. Such stock held by the municipality or any part thereof may be sold by public auction or by private contract, and a transfer thereof effected by the warden and clerk of the municipality, if so decided by a majority of the council at a special meeting called for the purpose and advertised for at least sixty days in one or more newspapers published in the county, if any, or if there be none, by hand-bills posted in various parts of the municipality; but no such sale shall take place if a petition in opposition thereto signed by one third of the rate-payers of the municipality be presented at a meeting of the council.

Failure to ap-  
point Commis-  
sioners.

14. In case of the failure or neglect of the council to appoint commissioners as provided in the eighth section, the Supreme Court shall have power to appoint a person or persons to perform the duties of such commissioners.

## TITLE XIII.

## OF MUNICIPAL GOVERNMENT.

## CHAPTER 56.

## OF COUNTY INCORPORATIONS.

1. The inhabitants of every county and district in this Province, namely, Colchester, Cumberland, Picton, Halifax, <sup>Incorporated counties and districts.</sup> West Hants, East Hants, Kings, Annapolis, Digby, Clare, Lunenburg, Chester, Queens, Shelburne, Barrington, Yarmouth, Argyle, Antigonish, Guysborough, St. Mary's, Cape Breton, Victoria, Inverness, and Richmond, shall be a body corporate, under the name of the Municipality of the respective county or district as the case may be, shall have a perpetual succession and a common seal, with power to break, renew or alter such seal at pleasure, and shall be capable of suing and being sued, of pleading and being impleaded, in all courts and places whatsoever, of purchasing, acquiring and holding lands and tenements and other real and personal property within such municipality for the use of the inhabitants thereof in their corporate capacity, and of making and entering into such contracts as may be necessary for the exercise of their corporate functions, and the powers of the corporation shall be exercised by and through and in the name of the municipality of such county.

2. Nothing in this Chapter contained shall interfere <sup>Incorporated cities and towns.</sup> with, limit or restrain the corporate powers or privileges of any city or incorporated town, nor shall this Chapter extend to or include within the municipality of any county any city or incorporated town; and the term "county" shall, except when enlarged by the context, mean that part of the county or district within the territorial jurisdiction of the county council.

3. The council shall consist of a warden and councillors. <sup>Warden and councillors.</sup> The warden shall be head of the council and shall preside at all its meetings. The warden and councillors shall serve until their successors shall be sworn into office.

4. The council elect and sworn shall at the first <sup>Warden, how chosen.</sup> meeting next after their return choose from among themselves a warden, who shall hold office until the next election of councillors; should a vacancy occur in the office of

CHAP. 56. warden, the council at its first meeting thereafter shall elect a warden ; but during his temporary absence they may choose a chairman from the members present ; and should a majority of the councillors not agree upon the choice of a warden, then the Governor-in-Council shall appoint one of the councillors warden.

Appointment of a deputy warden

5. The council shall from time to time as occasion shall require select one of its members as a deputy warden, to act in the absence or illness of the warden, and such member when notified in writing by the clerk of the municipality and any three councillors that the warden is absent or unable to fulfil his duties shall have all the power and authority of the warden.

Clerk to preside at first meeting.

6. At the first meeting of every municipal council after a general election of councillors the person holding the office of clerk shall preside until the warden be elected, unless a chairman be appointed by the councillors elect, and it shall not be necessary for the outgoing councillors to attend.

Time of election of councillors.

7. The election of councillors shall be held on the third Tuesday of November of every alternate year, and shall be conducted by presiding officers named by the councils.

Elections where held ; and number to be returned.

8. The elections shall take place in and for each of the polling districts laid off for the election of members to serve in the General Assembly as they may exist at the time of the election, irrespective of the subdivisions made or authorized by Chapter 4 ; and each district shall return one councillor, except the districts mentioned in Schedule A to this Chapter, which sections shall return the number of councillors therein specified, and the election shall take place in and for the several counties or districts mentioned in this Chapter as therein directed.

Notice of election how given.

9. It shall be the duty of the presiding officers to give at least ten days' public notice by handbills of the times and places of holding the election, and post the same on three of the most public places in each district ; and the persons appointed by the council shall preside at all such elections. It shall be the duty of the municipality clerk to supply the presiding officers with such notices.

Clerk to supply notices to presiding officers.

Time of opening and closing poll.

10. Every election shall commence at half-past eight o'clock in the morning, and the poll shall be kept open until five o'clock in the afternoon.

Nomination of candidates, and notice thereof.

11. No person shall be a candidate unless he shall have been nominated in writing by at least six persons who are qualified to vote at the election for which he shall be nominated ; such nomination shall be filed with the presiding officer of the polling district for which such

candidate is nominated at least ten clear days before the time for holding such election. The presiding officer shall, if required, give a receipt for such nomination, and shall immediately after the time within which such nomination may be made cause public notice to be given in a newspaper published in the county, or by notices posted up in at least three of the most public places in the polling district for which such candidate is nominated. Any neglect or omission of duty under this section on the part of the presiding officer shall not invalidate any election. The presiding officer however shall be liable in case of any violation, neglect or omission of duty to a penalty of fifty dollars, with twenty days' imprisonment in case of non-payment.

12. In the event of no more than the required number of candidates having been nominated for any district within the time in this Chapter fixed for nominations, the person or persons so nominated shall be declared elected by the presiding officer, and it shall be unnecessary to hold any election in any such district. If more than the required number shall be nominated, a poll shall be held on the day appointed.

When no election to be held.

When election to be held.

13. The voting for councillors shall be by ballot; the names of the candidates shall be written or printed on white paper and delivered by the elector to the presiding officer, who shall satisfy himself that the ballot is single and deposit it in the ballot box without reading; at the hour of closing, each candidate, or in his absence some one on his behalf, may choose an elector, to be sworn before the presiding officer as tellers, and the presiding officer shall publicly open the ballot box and take out each ballot separately and read the names thereon, so that each teller may take them down; when all are read and taken down the presiding officer shall state the number of votes polled for each candidate and declare those having the largest number of votes elected; the presiding officer in addition to his vote as an elector shall give the casting vote if necessary.

Voting to be by ballot.

14. The proclamation and summons of the presiding officer shall be notice to every councillor elect present in person or by an authorized agent or clerk; councillors elect not so present shall be immediately after the election notified and summoned by the presiding officer by mailing a notice of their election to their address.

Notice to councillor elect.

15. Before the presiding officer shall allow any votes to be polled he and the clerk he may employ shall take the oath in the schedule annexed before a justice of the

Presiding officer and clerk sworn.

CHAP. 56. peace, and they shall certify such oath in the poll book for the election.

Vote, where to be given. 16. No person shall vote except in the district in which his name is recorded in the list of voters for such district.

Qualification of electors. 17. Municipal electors shall have the same qualification and be liable to the same objections, questions and oaths as electors for members of Assembly shall at the time by law be required to have and be subject to; and the objections shall be taken and questions and oaths put and administered as the law regulating elections of members of Assembly shall require.

Qualifications of councillors. 18. No person shall be qualified to be elected or serve as councillor who shall not at the time of the election be possessed of the same qualifications as are required in the case of members of the House of Assembly.

Disqualification. 19. None of the following persons shall be elected a councillor or be appointed to office by any council; nor shall any person continue to act as councillor or hold any office under a municipal council after becoming one of the persons disqualified as follows:

Clergymen, &c. (1.) Persons in holy orders, or ministers, or teachers of any religious sect or denomination.

Sheriffs. (2.) The sheriff.

Contractors. (3.) Any person having a contract or share or interest in a contract with the municipality.

Judges. (4.) Justices of the supreme and county courts and judges of probate.

Exemptions. 20. The following persons shall be exempt from being elected councillor or serving in any municipal office unless with their own consent.

Legislators, &c. (1.) Senators and members of the House of Commons, members of the Executive or Legislative Councils, members of the Legislative Assembly, schoolmasters actually engaged in teaching, persons more than sixty years of age.

Retired Councillors. (2.) Persons who have served as councillors or in any municipality office, or paid the penalty for refusing, shall be exempt during the four years next after such service or refusal.

Office under government not to disqualify. 21. The holding of any office or employment under the Government of Canada or the Government of Nova Scotia shall not disqualify any person for election as a councillor.

Powers of presiding officer. 22. The presiding officer at an election of councillors during the time of such election shall be a conservator of the peace, and shall be invested with the same powers for the preservation of the peace, the apprehension, committal, holding to bail for trial, or trying or convicting offenders,

as are vested in justices of the peace under any Act of this Province; and for the purpose of preserving peace and good order all justices of the peace residing in the district shall attend at the election, upon being notified in writing by the presiding officer, and such officer may command the assistance of all justices, constables and other persons present at the election, and may swear in as many special constables as he thinks fit; he may commit any person for a breach of the peace or for molesting or threatening any elector at or coming to or returning from the election, or for any violation of good order, to the custody of any constable or person present on view for such time as he deems expedient, or may by writing under his own hand commit the offender to the common jail of the county for any period not exceeding ten days, and any justice of the peace or other person present at the election who shall neglect to aid or assist the presiding officer during such election when requested by him shall incur the same penalty.

23. No person who may be elected a councillor shall act in that capacity until he shall have taken and subscribed before a justice of the peace for the county, or the sheriff in the case of the first election, and in case of subsequent elections before the warden or municipality clerk, the oath of allegiance to Her Majesty and also the oath of office and qualification; such oath shall be taken and subscribed by each councillor duly qualified at the first meeting of the council after his election, or otherwise within ten days after notice of his election, and in default thereof such person shall be deemed to have refused to accept the office of councillor, and shall be liable to pay the municipality clerk such fine, not exceeding forty dollars nor less than twenty dollars, as the by-laws of the council shall prescribe, provided that no person elected a councillor shall be subject to a penalty for not taking the required oaths if he be not qualified, which fact he shall be required to verify on his own oath before a justice of the peace on first election, and before the warden or municipality clerk on subsequent elections; provided that the council may extend the time for any councillor to take and subscribe the oaths of office and qualification on reasonable cause shewn to the satisfaction of the council.

Oaths to be taken by councillors.

Proviso.

24. In case of the death or resignation of any councillor, or his permanent absence from the municipality, or absence for more than six months, or incapacity after election, or refusal to accept office, or neglect to be sworn, or in case of a vacancy occurring from any other cause, the warden of the county shall issue a warrant under his hand and seal

Vacancy in council, how supplied



**CHAP. 56.** to the presiding officer, requiring him to hold an election in the district to elect some other person to fill the vacancy, and such election shall be conducted in the manner prescribed in this Chapter for holding elections, but no warrant shall issue for an election to supply a vacancy within three months of the annual election.

**Returning officer to administer oaths.** 25. Every returning officer or person holding any election under this Chapter shall have power to administer all oaths and affirmations required to be administered or taken at any such election.

**Oath of office to be taken.** 26. Every officer who shall be elected or appointed under this Chapter shall before entering on the duties of his office take and subscribe the general oath of office contained in the schedule, unless officers for whom the schedule contains a special oath of office.

**Resignation of office.** 27. A warden or councillor may resign his office at any time by a declaration to that effect under his hand and on payment of a fine of forty dollars.

**Occasional vacancy.** 28. The warden or councillor elected to fill an occasional vacancy shall hold office for the residue of the term of the person whom he succeeds, but no longer, but he shall be capable of re-election if qualified.

**Councillor not to hold license for or sell intoxicating liquors.** 29. Any person elected councillor who shall have been sworn into office shall be incapable of holding a license for the sale of intoxicating liquors, and any councillor who shall be convicted of selling intoxicating liquors contrary to law shall thereby vacate his seat as such councillor, and his place shall be supplied in the same manner as if he had resigned his seat.

**Meeting of councillors elected.** 30. On the second Tuesday of January in all the municipalities, except Yarmouth, and in Yarmouth on the third Tuesday of January, after the annual elections the councillors elect shall meet at the county court house, and in any municipality in which there is no such court house in the room or place heretofore used for meetings of the sessions or municipal council, or in such place as the council shall have appointed, and the municipality clerk having produced the returns of the presiding officers, and the seals being then and there broken and the returns examined, the councillors elect shall be sworn into office.

**Quorum of council.** 31. A majority of the council shall be a quorum for the transaction of business; a smaller number may adjourn from time to time, and absent members may be compelled to attend under such penalties as may be provided by by-law of the council. All questions arising in the council shall be decided by a majority of votes; and the warden or temporary chairman shall have a right to vote on all questions before the council; and in the event of a tie when a

vote is taken the question then put to the council shall be considered as passing in the negative. CHAP. 56.

32. There shall be two regular meetings of the council in each year; the first, herein designated the annual meeting, shall be held at the county court or district court house, on the second Tuesday of January, except in the municipality of Yarmouth, where the annual meeting shall be held on the third Tuesday of January; the second, herein designated the half yearly meeting, shall be held at such time and place as the council may by by-law appoint; provided that until such appointment by by-law be made, the said meeting shall be held as by Chapter 1 of the Acts of 1879 provided or any amendments thereof.

33. Besides these regular meetings, the council may meet as often as expedient for the despatch of business, at such time and place as they may appoint; public notice shall be given of the time and place of each meeting of the council, and all meetings shall be open and public; the council shall have power to adjourn and to appoint committees to act during the session and recess. If any council fails to meet at any time appointed by law, they shall not thereby be deemed to be dissolved, but may hold future meetings as if there had been no failure.

34. The warden, on application of at least one third of the councillors, shall call special meetings; the notice shall specify the object thereof, and be posted up in some public place in each district, and each councillor shall be served with a copy thereof personally or by leaving the same at his residence at least five days before the meeting, or by sending notice post paid to his address at least ten days before the meeting. In case of absence from the Province of the warden, or in case of there being no warden, the clerk, on the application of three members of the council, shall call a special meeting in the same manner and for the like purposes as the warden.

35. The warden and councillors shall be paid, that is to say: the warden by a salary to be established by the council, not to exceed \$50 besides travelling expenses, and the other councillors according to their actual attendance at meetings of the council at such rate as the council by by-law shall determine, not to exceed two dollars per day and travel at the rate of five cents per mile for once going to and returning from every meeting.

36. The warden and councillors shall respectively be liable to such fines for non-attendance or other neglects as the council by by-law may appoint, of which the clerk shall keep a correct account; nor shall any of them be authorized to receive any payment for salary or fees until such fines as may stand against them be deducted.

CHAP. 56. 37. The council shall have power to make, and from time to time to alter, such rules and regulations as may be requisite for the conduct and good order of its proceedings, and such by-laws touching any matters within its authority as it may judge proper.

By-laws, rules  
and regulations.

COUNTY OFFICERS.

Appointment of  
county officers.

38. Each council shall appoint a clerk and a treasurer, who shall respectively perform the duties assigned to them by the council and all duties and powers imposed on them by law, and the council shall prescribe the duties of such officers, and the security to be given for the faithful performance thereof; and may appoint a deputy clerk when they deem it necessary, who shall perform all the duties of the clerk under this Chapter. The clerk may himself appoint a deputy, who shall perform all his duties in the event of his temporary absence, illness or other incapacity, and the clerk shall be responsible for all acts and omissions of his deputy.

Eligibility of  
clerks.

39. None of the following persons shall be elected: clerks of any municipal council, nor shall any person continue to act as clerk of a municipal council after becoming one of the persons disqualified as follows: Senators, members of the House of Commons, members of the Legislative Council, members of the House of Assembly, or the business or professional partner of any or either of the persons thus disqualified.

Duties of clerks.

40. The general duty of the clerk shall be to record in a book all the proceedings of the corporation, and state an exact account of the attendance of each councillor at each meeting, make regular entries of all resolutions and decisions, and if required by any member present to enter the votes as given, and to preserve and file all accounts, and to keep the books, records and accounts of the corporation, which shall be open, without fee or reward, to the inspection of all persons, being ratepayers of the municipality, at all seasonable times and hours.

Duties of trea-  
surer.

41. The treasurer shall be appointed annually. It shall be the duty of the treasurer to receive and safely keep all monies belonging to the municipality, or which he shall be appointed to receive, and keep and pay out the same to such persons and in such manner as he shall be directed to do by any lawful order of the municipal corporation, or by any law of the province, and strictly to conform to and obey any such law or any by-law lawfully made by any such municipal corporation, and faithfully to perform all such duties as may be assigned to him by any such law or by-law; and every treasurer shall annually

give such security for the faithful performance of the duties of his office, and more especially for the due accounting for and paying over all monies which shall come into his hands by virtue of his office, as the municipal corporation by which he was appointed shall direct. CHAP. 56.

42. The council shall make such by-laws or resolutions as to the duration of the office of the clerk as to them shall seem fit. Duration of office of clerk.

43. The council shall make such by-laws or resolutions as to the number of offices to be held by one person, as to the holding of offices by partners of municipality officers, and as to officers having an interest in any work undertaken for the municipality, as to them shall seem fit. By-laws as to officers.

44. The council, at its first meeting in each year or as soon after as practicable, shall appoint two persons to be county auditors. No person shall be appointed auditor who is a member of the municipality council or one of the officers, or who was a councillor or officer at any time within a year previously, or who shall directly or indirectly, by himself or partner, have any share or interest in any contract with the municipality council, or any employment under them. No municipality auditor shall act as such unless he shall have the qualification required for a councillor, and shall have previously made and subscribed the oath of office and qualification. Appointment of county auditors.

45. It shall be the duty of the municipality auditors to examine and audit the accounts of the treasurer, and all other accounts of the council or corporation, or in which the municipality is concerned; and all such accounts as may be referred to them by the council for special examination, and report as instructed; and it shall be the duty of the council to refer to them all such accounts, and their duty faithfully to report thereon without needless delay. Auditors' duty.

46. The municipality auditors shall have authority to call for all books and vouchers they may deem necessary for elucidating any account laid before them. No account shall be allowed or passed by the council until the same is audited and reported upon by the municipality auditors; and all audited accounts shall be open at all reasonable times to the inspection of any elector or ratepayer of the municipality. The council may make such compensation to the municipality auditors as they may think right and proper from time to time. Auditors' authority and compensation.

47. The treasurer, overseers of the poor, assessors, collectors, and other officers whose term of office is not by this Chapter, or shall not be by by-law of the corporation, Tenure of office.

CHAP. 56. otherwise determined; shall hold office from the time of their appointment, or from the time by the council fixed for its commencement, until the first annual meeting in January next after or until their successors be appointed, except surveyors of highways and commissioners of streets, who shall enter upon their duties on the first day of April in each and every year.

Oath of office. 48. Every person elected or appointed under this Chapter to take any office shall, before he shall enter upon the duties of his office, take and subscribe the general oath or qualification contained in the schedule of oaths.

Qualification for office. 49. No person shall be qualified to vote or to be elected or appointed to any office under this Chapter who shall not at the time of his voting, election or appointment be a natural born or naturalized subject of Her Majesty, her heirs or successors, and of the full age of twenty-one years.

Forfeiture for neglect or refusal. 50. Every qualified person duly elected or appointed to any office in, by or under the municipality in cases not herein expressly provided for, who shall refuse such office, or neglect to take the several oaths or affirmations required by this Chapter in respect thereof within ten days after his election or appointment; and every person who shall enter on the duties of an office under this Chapter without having taken the oath required in respect of such office; and every person duly authorized to administer such oaths or affirmations who shall refuse to administer the same when such administration is reasonably demanded of him; shall thereupon respectively forfeit such sum, not more than eighty dollars nor less than eight dollars, as may be prescribed by the by-laws of the municipal corporation, to be paid to the clerk of such corporation for the use thereof; provided that such forfeiture shall not be incurred by any person not legally qualified, or who shall be legally exempt, and who shall verify that fact on his oath.

Vacancies, how filled. 51. Whenever the council shall neglect or omit to appoint any officer required to be appointed by any law in force in the Province, or if any person so appointed shall die, resign, leave the Province, or refuse to act, or when any office shall become vacant in any manner, it shall be lawful for the warden and any three councillors to fill any such vacancy; and the person or persons so appointed shall have the same powers, duties and liabilities as if appointed by the council, and shall hold office until the council shall appoint another person or persons to fill the vacancy, which the council may do at any time.

Clerk to post lists of officers. 52. The clerk of the municipality shall cause lists of all officers appointed by the council for the several town-

ships or districts to be posted in at least three of the most public places therein within one week from the meeting of such councils. CHAP. 56.

53. All officers appointed by the council shall be eligible for reappointment annually, and may serve in one or more offices, except municipal clerks and treasurers, who shall not be eligible to hold both of said offices conjointly after the annual meeting of the council in January, 1885; provided that commissioners of streets shall not be obliged to act more than one term in succession. Officers may be re-appointed.  
Exceptions.

54. Surveyors of highways shall make their returns to the clerk of the municipality at least twenty days before the annual meeting of the council, under penalty of two dollars for each default. Surveyors of highways to make returns.

#### COUNTY PROPERTY.

55. The municipalities shall have authority for the purchase, acquirement and management of all such real and personal property within the municipality as may be required for the purposes of the corporation and the sale and disposal of the same when no longer required; and for the superintendence and management of all the property of the municipality, and for the erection, preservation and repair of the municipality court house, jail, lock-up house, town hall and all other buildings required by or being upon any land belonging to the municipality; and all property of every description belonging to the municipality or any district or districts, or which is now vested in the trustees of public property for the county or district hereby incorporated, shall vest in and be under the management and control of the municipal council. Municipal council to have control of municipal property.

56. All lands granted, conveyed, reserved or dedicated, or which may have been procured, or for twenty years before the passing of this Chapter shall have been used, for public purposes in the county or district, whether for the site of any court house, jail or lock-up house, or for the public purposes of the county or district generally, with the buildings and appurtenances thereon or thereto belonging, and all lands and buildings hereafter procured or given for the public purposes of the county or district generally, and which heretofore were vested in the trustees of public property, shall vest in the municipality for the public uses for which the same may have been originally intended. Public property formerly vested in trustees now vested in municipality.

57. No lease shall be made hereunder for a longer period than twenty-one years. Limit of lease.

CHAP. 56. 58. The municipal council may make by-laws for the better regulation of such lands and buildings, and affix penalties for breach thereof.

By-laws concerning public property, how made.

Lands and property exempted from operation of Chapter.

59. Nothing in the four next preceding clauses contained shall affect any place of divine worship, burial ground, college, academy, school, or any land thereto belonging, or any land belonging to any religious congregation or society, or any lands vested in the supervisors of public grounds under the chapter "Of Supervisors of Public Grounds," or shall deprive any person of any right lawfully acquired; nor shall anything herein contained affect any lands or buildings now vested in trustees, or the necessary control of the sheriff over the court house and gaol.

Municipalities may be trustees.

60. It shall be lawful for any municipality to receive deeds and grants of any property, real, personal or mixed, either absolutely or upon any trust which may be expressed therein, and the municipalities are and each of them is hereby authorized to do all things which may be needful for carrying out any such trust.

Crown lands may be granted.

61. It shall be lawful for the Governor-in-Council to grant to any municipality any land or lands wholly or in part covered with water which are vested in the Crown and are under the control of the Local Legislature or of the Governor-in-Council, either absolutely or upon any trust of a public nature, or for the benefit of the inhabitants of the municipality or of the public, and such grant may be made without compensation being required therefor.

Powers of municipalities.

62. The municipalities may vote, assess, collect, receive, appropriate and pay whatever monies are required for purposes named in the fifty-eighth chapter of the Revised Statutes, and shall have all the powers and authority conferred under that chapter, and shall carry out the objects of that chapter as nearly in conformity with the mode it directs as shall be consistent with this Chapter and the incorporation thereunder, and it shall be lawful in each municipality for the council to add to the sums which are required to be raised, and which the council are authorized to raise, by assessment, such sums as may be deemed sufficient to make up any deficiency likely to be caused by rates being uncollected.

Appointment of assessors and collectors.

63. The municipalities, for raising the moneys required under such chapters and which may be required for any other township, district, or county purposes, shall at the annual meeting in January appoint a suitable number of assessors and collectors, prescribe their duties, and allot their limits within which to act. Casual vacancies shall be filled by the council, if such vacancies occur within a month

before either regular meeting of the council, and in other cases as provided in section twenty-four of this Chapter. CHAP. 56.

64. The municipal financial year shall end on the thirty-first day of December, and all accounts of the several officers and of the municipality shall be audited, examined, determined upon, and passed, as far as possible, at the first annual meeting in January. Financial year.

65. Orders for assessment may be made by the council at any regular meeting or special meeting called for that purpose. Order for assessment.

66. When it is necessary to raise any sum of money for the payment of the contingencies of the county, or of any thing chargeable upon the contingent fund of the county, or to meet any deficiency in such fund, the county council may order the same to be assessed, levied and collected. Contingent fund.

67. The county council at any semi-annual meeting are authorized and empowered to order an assessment to be made against any certain district or districts in their municipality that may at any time be indebted to the county, for the whole or part of such indebtedness, as may be deemed advisable by the council, or they may order a portion of the same to be assessed at one time and a portion at another; and the amount so ordered to be assessed shall be included in the general warrant of assessment against the district; and shall be assessed and collected in the same manner as other district rates are assessed, levied and collected, and when so collected shall be applied to the payment or reduction of the debt due by the district from which it has been collected. District assessment.

68. All debts, liabilities, and obligations of every kind which may be due or owing, or to which any county or district hereby incorporated may be liable at the time of its incorporation, shall be assumed, paid, and performed by the municipality council, and be recoverable from the same by action or otherwise, on the same terms and conditions as the same should have been paid and performed if the county or district had not been incorporated; and all property of a public nature and debts of every kind, belonging or owing to any county or district hereby incorporated, shall at the time become vested in and due and payable to the municipality council; but no municipality council shall issue or authorize the issuing of any bill or note, or in any way act or authorize any persons to act as bankers. Existing liabilities provided for

69. In assessing any rate or tax, the municipality council shall be governed in all things by the laws now or hereafter to be enacted for the levying and collecting of poor and county rates, except as herein provided; and the Rates how to be assessed.



**CHAP. 56.** same shall be apportioned and assessed equally on all property liable by law to poor and county rates; but no rate or assessment whatever shall be made or levied on any lands, tenements or other property, real or personal, of Her Majesty, her heirs or successors, or in possession of the Board of Ordnance or of the Dominion Government.

Percentage, &c.,  
to be continued.

70. All allowances or per centage granted by law to any collector or county treasurer, and all salaries, wages and allowances of any kind enjoyed by any county, town or district officer, shall continue to be paid after the incorporation of any county or district, until otherwise ordered by the municipality council.

Abstract to be  
laid before Legis-  
lature.

71. At least ten days before the meeting of the Provincial Legislature the wardens shall transmit an abstract of the receipts and expenditures of the municipality during the preceding year to the Governor, who shall lay the same before the Legislature.

Excepted pro-  
perty.

72. Nothing in this Chapter shall extend to any toll bridge or road belonging to any company or individuals, nor to any work under the control of the Imperial, Dominion or Provincial Governments, or of the military authorities.

Fines and penal-  
ties, recovery of.

73. All fines and penalties imposed by any by-laws of the municipality councils, and for the recovery of which no other provision is made, may be recovered with costs by suit and execution, as in the case of debts, in the name of the corporation, before any justice or justices of the peace for the county, or in the county court for the district, and all fines and penalties when recovered shall be paid and applied as the by-law shall direct, or when not specially provided for to be paid into the treasurer for the use of the municipality. No informer or other person who is to receive for his own benefit any part of a fine or penalty shall be a competent witness for the prosecution, unless he first relinquishes in writing all claim to his proportion of the fine or penalty; in such case the whole penalty shall be applied as the by-law shall direct for that portion which was to go to the informer or prosecutor.

Assessment of  
rates, tolls, &c.

74. All rates and tolls imposed by the council shall be assessed and recovered in manner prescribed by the by-laws, and by such assessors and collectors as may be appointed for that purpose by the council at one of the two meetings hereby appointed, provided such by-law is not repugnant to any law of the Province or to this Chapter.

Existing rates,  
how assessed.

75. All rates for public purposes not within the scope and authority of this Chapter which the inhabitants of any county or district which is hereby incorporated are now liable or may hereafter be liable to pay by law of the Province, shall continue to be assessed upon and paid by

the inhabitants of any such municipality until otherwise directed by an Act of the Legislature. CHAP. 56.

76. At the annual meeting of the council in January the council shall vote for each poor district the sum it shall judge necessary for the support of the poor in that district, and for the purposes enumerated in chapters 35 and 36 of the Revised Statutes or any Act in amendment thereof; and shall appoint overseers of the poor for the existing poor districts until such existing poor districts shall be altered by the council; which districts it shall have power from time to time to alter if it shall see fit so to do. Poor-rates and districts.

77. Town meetings shall not be held to provide for the support of the poor. Poor meetings discontinued.

78. The overseers of the poor shall account to the council; and the council shall exercise the functions given by such chapters, and shall hear and determine appeals, and in all particulars shall carry out the object of these chapters as nearly in conformity with the mode thereby directed as shall be consistent with this Chapter and the incorporation thereunder. Overseers of poor.

#### DISTRICT OFFICERS.

79. The municipal councils shall appoint a sufficient number of pound keepers, fence viewers, overseers of the highways, road surveyors, and such and so many officers, as may be necessary for carrying into effect any of the provisions of this Chapter, or of any other Act of the Legislature concerning any of the subjects placed under the jurisdiction of the councils, or of any by-law of the municipality; and in like manner to displace any of them and appoint others in their room, and to add to or diminish the number of them as often as the corporation shall see fit, and to regulate their powers and limits wherein they shall be exercised; and shall regulate and prescribe the duties of all officers acting under the authority of the corporation, and the penalty of their making default in the performance of such duties, and shall settle the remuneration of all such officers in all cases where the same is not settled by an Act of the Legislature, and the providing for the payment of the remuneration which by Act of the Legislature or by the by-laws of the municipality may be provided for such officers; and shall regulate the bonds and recognizance or other securities to be given by such officers for the faithful discharge of their duties, the penalties for refusing to serve in any office, and for the infringement of any by-law of the municipality. Appointment of district officers.

80. The municipal council shall have the appointment of health officers, health wardens and health inspectors, and a board of health, who shall have the powers conferred Appointment of health officers and stipendiary magistrates.

CHAP. 56. by Chapters 26 and 27 of the Revised Statutes, and may at any meeting appoint one or more police or stipendiary magistrates under the provisions of chapter 129 of the Revised Statutes, 3rd series, and the Act or Acts in amendment thereof; and may remove any such person so appointed according to the provisions of said chapter.

Powers of warden and councillors.

81. The warden and councillors while in office shall *ex officio* be justices of the peace in and for the county, and shall have within the municipality all the powers and jurisdiction which belong to that office, and as well the warden as in his absence any councillor shall have power to administer oaths and affirmations concerning accounts and other matters which shall be submitted to the corporation or shall concern the same. But they shall not have power to try any suit or action unless regularly holding a commission as justice of the peace, and no warden or councillor shall have power to try any action or suit to which the municipality is a party.

Council's powers

82. The powers and authority of the council shall also extend to the following objects:—

Laying out roads, &c.

(1.) The laying out of new roads and the making, maintaining or improving of any new or existing road or streets, or for stopping up, altering or diverting the same, not being a great road, subject however to the provisions of the law and the restrictions and protection to private rights contained in any statute relating thereto, and subject to the rights of the Crown and the Province in public property, provided that no municipal councillor shall be appointed to act under chapter 45 of the Revised Statutes.

Money for roads and bridges.

(2.) The appropriating and apportioning of road and bridge money granted by the Legislature, to be laid out in the municipality by the municipal authority, and also to authorize and provide for the raising, assessing, levying, collecting and appropriating such sum or sums of money as the county or district council shall from time to time consider necessary to make, maintain, repair, alter or improve any roads, bridges and streets within the municipality, such monies to be raised by rates to be assessed on real and personal property or its owners or occupiers in the same manner as county rates are assessed, levied and collected, provided that no greater sum than one thousand dollars for such purposes be raised and assessed in any one year in any one municipality without the consent of the Governor-in-Council.

Statute labor.

(3.) The collecting and enforcing the performance of statute and highway labor, and the expenditure of the commutation money for highway labor, and the returns

thereof shall be made to the council or their clerk, or as the council may order. CHAP. 56.

(4.) The division of the municipality into road districts, and the appointment of a superintendent of roads in each, with such powers as regards the roads and bridges, and the expenditure of provincial and municipality money, and statute labor therein, as the council shall see fit to confer; and the erection, perservation and repair of any new or existing bridges, and the regulating the driving and riding over bridges; the protection of timber, stone, sand, or gravel, or any appropriation for roads or other public property, and the sale of such timber and other articles. Road districts.

(5.) The support of the poor by municipality, township, or district organization, and the erection and maintenance of municipality, township, or district poor houses. Poor-houses.

(6.) The making orders for carrying into effect the law, as it may from time to time exist, concerning the manufacture, importation, and sale of intoxicating liquor, and the providing payment for expenses that may be incurred in relation to that subject, in so far as it may be competent for the legislature of Nova Scotia to confer such authority. Licenses for intoxicating liquors.

(7.) The regulating ferries, public wharves, and landings, and the establishment and regulation of markets and fairs. Ferries, public wharves.

(8.) The providing means for defraying such expenses connected with the administration of justice as are required to be defrayed out of the municipality funds; the raising, assessing, levying, and appropriating all monies that may be requisite for carrying into effect the objects for which the council is empowered to act or to make by-laws; such monies to be raised by rates to be assessed on real and personal property, or its owners or occupiers. Administration of justice.

(9.) The collection and accounting for of all toll, rates, and assessment of the municipality revenues; but no monies shall be voted, nor any salaries determined upon, except at one of the regular meetings, or an adjournment thereof, unless the public service may require a deviation from this rule; in such cases, as also in cases of adjourned meetings, every member of the council shall have notice of the meeting and its objects. Collection of revenues and voting monies.

(10.) The making of all contracts relative to matters under their control, which contracts after having been duly considered by the council shall be signed by the warden, and countersigned by the clerk of the council. Contracts.

(11.) The determining what officers it may be expedient to pay, fixing the amount of the salaries, fees, and remuneration, where not fixed by this Chapter, and the time and mode of paying them, regulating the returns of assessors Officers' salaries.

CHAP. 56. and collectors, with a view to the general business of the municipality; the expense of municipal elections, and the mode of remuneration.

Municipal elec- (12.) The appointing of presiding officers for conducting municipal elections, the times, places, and mode of election, and the times, form, and manner of the presiding officers' returns, so far as may not be especially directed by this Chapter.

General supervi- (13.) The providing for any other purpose, matter or sion. thing specially subjected to the control of the council by law; but no by-law shall impose any punishment or imprisonment, or any penalty exceeding twenty dollars.

Oaths, how ad- 83. When no provision shall be made in this Chapter ministered. for the administering of any oaths or affirmations required to be administered or taken, the same may be administered by the warden, or in his absence by the clerk, or by any councillor or any justice of the peace; and when an oath or affirmation is directed to be administered by or taken before any officer or person, the authority to administer is included.

Jury lists, revis- 84. The municipality councils shall appoint committees ing of. of their own body to revise the jury lists in accordance with the Acts relating thereto, and shall fulfil all the duties imposed by those Acts.

#### GENERAL PROVISIONS.

Powers of jus- 85. Nothing in this Chapter shall be construed to take tices. from justices of the peace their power as conservators of the peace, or to impair or abridge the criminal jurisdiction they possess by common or statute law, or their authority over offences partaking of a criminal nature, given by any law of this Province or Dominion, nor the power to administer oaths, nor any power belonging to the office of justice of the peace, which is not taken away by this Act either expressly or by necessary implication.

Warden and 86. The warden and councillors of any municipality councillors ex- shall be exempt from serving upon any grand or petit jury; empt from jury service. but no electors or other persons in any municipality other than said warden or councillor shall be incompetent to serve as jurors in any case in which the municipality is a party, by reason of his being a resident of such municipality.

Affirmation au- 87. Every person authorized by law to make affirmation thorized. instead of taking an oath, may make affirmation in every case where an oath is required by this Chapter.

Actions by and 88. Every action brought by or against any munici- against munici- pality council shall be brought by or against the same by palities. its corporate name; and in all such actions service of

process on the warden or clerk for the time being shall be good and valid service of such process. In case of judgment being given against the corporation the same shall be paid by order of the council without unnecessary delay, if there shall be funds available for the purpose, otherwise the amount shall be included in the next assessment and shall be paid out of the first moneys which shall be subject to the appropriation of the council; if the amount shall not be paid within six months after judgment recovered and demand made, the Supreme Court or a judge thereof in vacation shall have the power to amerce the municipality; but nothing herein contained shall take away the right of appeal where the same is now allowed.

89. Judgments against a municipal corporation shall bear interest at six per cent. per annum. Interest.

90. When any lands shall hereafter be taken for railway purposes under the provisions of chapter 70 of the Revised Statutes, 3rd Series, or any part of said chapter, or of any Act in amendment thereof, and a disagreement shall arise as to what proportion of the assessment for such lands to be levied under section 24 of said chapter shall be borne by any incorporated town or towns or city within the limits of the county in which such lands lie, such proportion shall be fixed and determined by three arbitrators to be appointed by a judge of the Supreme Court of Nova Scotia, and such arbitrators shall be appointed by any such judge on the application of any owner of land taken for railway purposes within the county, or of any person representing the county or representing any such city or town, or on application of the Attorney-General. The arbitrators shall be paid out of the general county assessment of the county in which such lands lie such fees for their services as shall be taxed by a judge of the Supreme Court, not however to exceed \$4.00 for each day of actual attendance and actual travelling expenses. Payment of arbitrators in land cases.

91. No action shall be brought against any person for anything done by virtue of an office held under any of the provisions of this Chapter, unless within six months after the act committed and upon one month's previous notice thereof in writing, and the action shall be tried in the county where the cause of action arose. Limitation of actions, &c.

92. The warden, councillors and officers acting under them shall be entitled to the protection afforded to constables under any of the statutes of this Province, and also to the protection afforded justices of the peace when acting in the capacity of justices of the peace. Protection of municipal officers.

93. A copy of any by-law heretofore made or hereafter to be made by any council, certified by the clerk of By-laws, how proven.

CHAP. 56. the municipality to have been compared with the original and to be a true copy, and a copy of any certificate of the approval of any such by-law by the Governor-in-Council, certified by the clerk of the municipality to have been compared with the original and to be a true copy, shall, without proof of the official character of such clerk or of his handwriting, be sufficient evidence in all courts of the passage, existence and approval of such by-law.

Proof of officer's appointment.

94. When on the trial of any suit or complaint in any court it shall be necessary to prove the appointment of any county or municipality officer, a certificate under the hand of the clerk for the time being and sealed with the seal of the municipality, stating the appointment and the time and manner thereof of any such officer, shall be sufficient proof of the appointment of such officer; and if any such certificate purports to be signed and sealed as aforesaid, the same shall be admitted in evidence without any proof of the seal, or of the signature of the clerk, or of the official character of such clerk.

Penalty for false certificate.

95. If any clerk shall wilfully give a false certificate of any appointment as aforesaid he shall on conviction be subject to a penalty of eighty dollars, which may be sued for by any person aggrieved.

#### BY-LAWS.

By-laws, &c., to regulate following objects.

96. The council may make regulations for the management and good order of their proceedings, and may make by-laws to regulate the following objects:

Management of property.

(1.) For the management of such real estate as may be required for municipal use, the management of all municipal property, and the support of the poor.

Commons.

(2.) For the regulation of commons in the several townships, provided that nothing herein or in such regulation contained shall extend to any commons regulated by a special Act remaining unrepealed.

Administration of justice.

(3.) For providing means to pay the expenses of the administration of justice chargeable on municipal funds, and for the preventing and extinguishing of fires.

Assessments.

(4.) For assessing and appropriating all monies authorized by law to be raised.

Revenue, salaries, &c.

(5.) For the collection and accounting of all tolls, rates and municipal revenues, for imposing penalties, determining the amount and manner of paying salaries, fees, and remuneration to municipal officers, making contracts, and for determining what officers shall be paid, and the amount and mode of paying of them.

Elections.

(6.) For regulating the election of councillors.

(7.) For the good rule and government of the municipality, and for the regulation and management of the local, municipal, fiscal, prudential and sanitary affairs thereof. CHAP. 56.  
Good govern-  
ment.

(8.) For regulating the mode, manner and form of making out accounts and claims against the municipality, for any matter or thing upon which the municipality may be liable to pay any sum of money for any purpose provided for by the laws relating to municipalities, and to declare the time at which the said accounts shall be filed with the auditor, and to direct that the said accounts or claims shall not be received for audit unless such form is complied with, and the council may by by-laws require all accounts or any account against the municipality to be attested to, and may prescribe the form and manner of such attestation. Accounts and  
claims.

(9.) For the establishment and regulation of market houses and fairs, and for the slaughtering of animals, and the sale of dead meats. Markets and fairs

(10.) For the establishment, licensing, and regulation of ferries, and fixing the rates and fares thereof, and for the conveying passengers to and from steam boats on their passage along the rivers. Ferries.

(11.) For the protection of streets, squares, sidewalks, and pavements, and of the posts, railings, trees and other defences, and ornaments thereof. Streets, side-  
walks, &c.

(12.) For the use and management of docks, wharves, landings and cranes, and fixing the rates of dockage, wharfage and crannage. Docks and land-  
ings.

(13.) For the weighing and measurement of salt, coal, and wood, lumber, logs, and timber, and fixing the rates thereof. Salt, coal and  
wood.

(14.) For the licensing and regulation of carriages for hire, cartage and truckage. Truckage.

(15.) For the weighing of hay and straw and grain, and fixing the rates therefor. Weighing hay,  
&c.

(16.) For the regulation of pounds, and fixing the fees and the rates to be taken and received by pound-keepers and persons lawfully driving anything to pound. Pounds.

(17.) For preventing the firing of guns or other firearms, or the setting off squibs or other fireworks, or burning of combustible materials, the carrying of fire, lighted candles, or lamps without being covered or secured. Fireworks.

(18.) For imposing and collecting a tax on dogs. Dog-tax.

(19.) For preventing the ringing of bells, shouting or other unusual noises in the streets, knocking at doors, or ringing door-bells. Disorderly noises



- CHAP. 56. (20.) For the regulation and management of booms for holding timber, logs and other lumber, and for the driving of timber and logs; for fixing the table of tolls for boorage with the lien of the boom-master therefor, and prescribing the mode of recovering and right of disposing of the lumber of any person for which such boorage may be charged in default of payment, not interfering with any corporation or person empowered by law to establish a boom. And shall also have power to make by-laws regulating the erection and maintenance and times for opening and closing sluices, and the conveyance of timber, logs, and lumber on any river or brook within the bounds of their respective municipalities.
- Boorage, &c.
- Police. (21.) For establishing and regulating a police in any town or village.
- Gaol limits. (22.) For defining the gaol limits, not exceeding three miles from the gaol.
- Work-houses and gaols. (23.) For the regulation and management of work-houses and gaols.
- Cattle and sheep. (24.) For the marking of neat cattle and sheep.
- Disorderly riding, &c. (25.) For preventing disorderly riding and driving on the public roads and bridges, and preventing coasting, skating and sliding on snow or ice down the hills, highways or streets.
- Noxious weeds. (26.) For preventing the growth of thistles and other noxious weeds.
- Burning brush. (27.) For regulating the manner and times of burning brush and other materials in clearing lands.
- River banks. (28.) For preserving the banks of rivers.
- Lock-up houses. (29.) For establishing lock-up houses in such parts of the municipality as may be necessary, and making regulations for the government thereof, and any prisoner in the custody of any officer may be imprisoned in such lock-up house until he can be removed to the common gaol; but no person under arrest in civil causes shall be detained therein more than forty-eight hours.
- Immorality, &c. (30.) For preventing vice, immorality, and indecency in the streets, highways, and other public places, and for preventing the profanation of the Sabbath, and for preventing cruelty to animals.
- Licensing exhibitions. (31.) For restraining and licensing all exhibitions, circuses, and other shows for hire or profit, and for preserving order thereat; but no license fee shall exceed forty dollars for a day.
- Nuisances. (32.) For abating and removing all public nuisances.
- Cattle at large. (33.) For preventing and regulating the straying or running at large of horses, cattle, sheep, swine, goats, dogs, geese, turkeys, hens and other domestic fowls; for the care and keeping of stray horses, cattle and sheep.

(34.) For regulating the measurement of boards, shingles, lathwood and other lumber, cordwood and other fuel; and for marking timber and logs. CHAP. 56.  
Wood measure-  
ment.

(35.) For the preservation of bridges, and preventing injuries thereto. Bridges.

(36.) For regulating the amount in which bonds shall be given by municipal officers concerned in the collection, receipt or expenditure of money, the form thereof, the manner in which they shall be given, and the nature and amount of the security required, when not otherwise provided. Giving security.

(37.) For defining the duties of municipal officers, and the manner in which they shall account for moneys received or expended by them. Officers.

(38.) For regulating the discharging and depositing of ballast in all harbors now under the control of the municipal council. Ballast.

(39.) The licensing of auctioneers and pedlars, and hawkers of goods and traders who are not ratepayers within the province. Licensing ped-  
lars.

(40.) The council may make regulations relative to the taxation of dogs, which regulations shall apply to the whole municipality, or to any district to be set apart and defined by the council; may fix the amount to be paid annually by owners of dogs, not exceeding one dollar for each dog, and may appoint officers to collect the same; and such regulations shall be published throughout the municipality for thirty days before they shall come into operation. Dog-tax.

97. An authentic copy of each by-law passed by the municipality council shall be laid before the legislature within ten days after the opening of its next session. Any by-law repugnant to the law of the land or the provisions of this Chapter shall be wholly void and of no effect whatever. And no by-law shall go into force and effect until the same be approved by the Governor-in-Council. By-laws to be  
laid before Legis-  
lature.

98. The clerk of the council in each municipality shall furnish each presiding officer with the certified list of persons qualified to vote in the polling section in which such officer is to preside, and no person shall be allowed to vote whose name is not on such list or any supplementary list, which the clerk of the municipality may furnish in case of inadvertent omissions. The list to be used at all elections shall be the list which would at the date of such election be used if an election were being held of a member to serve in the General Assembly. Clerk to furnish  
presiding officer  
with list of vot-  
ers.

99. For each revision section the municipal council shall annually appoint three persons who shall be duly sworn to the impartial performance of their duty according Appointment of  
revisors.

CHAP. 56. to the form of oath heretofore in use, and such revisors shall have all the powers and discharge all the duties of revisors under all or any Acts or Act relating to the election of members to serve in the General Assembly.

Special election provided for.

100. Should an election fail to be held at any time for any reason in any county or sessional district hereby made a municipality, the Governor-in-Council may appoint persons to conduct such election, and make regulations for holding and conducting the same, which regulations shall have the force of law, and the election held under and in conformity with them shall have the same force and validity as if the same were held under the provisions of this Chapter.

Appointment of arbitrators.

101. The proportion of county assessment which shall be borne by any incorporated town or city within the limits of any county or district hereby made a municipality, shall in case of a disagreement between the council of such incorporated town or city and the municipal council of any municipality hereby created, be decided and ascertained by the award of two arbitrators, one to be appointed by each such council, and in case of disagreement between such two arbitrators, by the award of an umpire, to be appointed by the Governor-in-Council, and in case of neglect or refusal to appoint such arbitrators by either or any council after ten days' notice to make such appointment, the Governor-in-Council shall appoint the arbitrator who should have been so appointed. Provided such arbitrators shall not be competent to enquire into or determine upon any of the details or items included in the amount to be assessed on any incorporated county or district.

Existing agreements.

102. All existing agreements between incorporated towns and sessions shall remain in force until revoked or altered in the manner herein prescribed.

Existing debts or liabilities.

103. All debts and liabilities of counties or sessional districts hereby incorporated, shall be and become debts and liabilities of the several municipalities formed by this Chapter from such counties or sessional districts, and all the assets and property of such county or district shall become the property of such municipality, and in every Act now in force and in all contracts wherein the word "county" or "district" (referring to a sessional district) has been used, the same shall be read as if the word municipality had been used, and the word "custos" in every Act and contract shall be read warden, and the words "justice of the peace," or "justices of the peace," in every Act and contract shall include, and be read councillor of the municipality, or councillors of the municipality, as the case may be, and the words "county treasurer," or "treasurer of the county," or

“district,” shall mean treasurer of the municipality, and the word “clerk of the peace” shall mean clerk of the municipality, or his deputy. CHAP. 56.

104. No person residing within the limits of any incorporated city or town shall have the right in any polling section to vote for councillors for any of the municipalities hereby created. Voting restricted

105. No municipality shall have power to borrow any sum of money without the authority of the Governor-in-Council, and for all sums of money to be borrowed in any one year above one thousand dollars, the authority of an Act of the Legislature shall be required. Powers to borrow money.

106. In any county or district the municipality shall have power to issue debentures bearing interest at a rate not exceeding six per cent. for the amount of any railway damages due and payable by such county or district, or for any part of such amount, such debentures to be in a form to be prescribed by the Governor-in-Council, and to be so arranged as to provide for the payment of such damages and interest in not more than five annual instalments. Debentures may be issued.

107. The polling districts of the County of Guysborough shall be for the purposes of this Chapter the same as they existed previous to the session of 1878, except as affected by chapter 35 of the Acts of 1880 and chapter 38 of the Acts of 1882. Guysboro' polling districts.

108. Polling district No. 8, Port la Tour, in the Barrington district, is divided at Clam Creek into two polling districts, to be known as Port la Tour polling district No. 8, with a polling booth at Port la Tour as heretofore, and Port Clyde polling district No. 9, with a polling booth at Port Clyde, each of which said polling districts shall have the right and shall elect one municipal councillor. Port la Tour, in Barrington district divided.

109. Polling district No. 6, Cape Island, in the district of Barrington, is divided into two polling districts, the boundaries of which shall be the same as those existing at the last general election holden A. D. 1882, and to be respectively known as polling district No. 6, with a polling booth at Clarke's Harbor as heretofore, and the other polling district to be known as polling district No. 9, with a polling booth at Centreville, and the said two polling districts shall each elect one municipal councillor. Cape Island in Barrington district divided.

110. That portion of polling district No. 2 in Shelburne district, and known as Birchtown, the inhabitants whereof reside on the main post road and Hart's Point, shall here- The electors of Birchtown to vote in town of Shelburne.

CHAP. 56. after vote in the town of Shelburne in polling district No. 3, and shall form part of said last mentioned polling district.

111. Polling district No. 11, for municipal elections, in the County of Cape Breton is divided as follows:

Polling district  
No. 20 in Cape  
Breton County  
established.

Polling district No. 20 shall comprise within its limits all the inhabitants within the following boundaries, viz:—Beginning on the shore of Low Point at the Kilkenny lake road near McPhee's ferry; thence following the northern side of the Kilkenny lake road, passing to the north of the lake until it meets the Lingan road near the school house; thence following the division line between the Sydney and Lingan districts southerly to the International railway; thence following said railway easterly to the bridge over said railway at Burchell's farm, Bridgeport; thence following the eastern line of the General Mining Association's farm northerly to the shore of Bridgeport Bay at Dead Man's Cove; thence westerly following the windings of Bridgeport and Lingan shores and round Low Point, and thence westerly to the place of commencement at McPhee's ferry—the polling place to be at or near James Hall's, Lingan.

Polling district  
No. 11 in Cape  
Breton County  
limited.

The said polling district number 11 shall comprise all the remainder of the said districts, and shall continue to return one councillor, and the polling place shall be as at present.

Said polling district number 20 shall return one municipal councillor to the municipal council for the County of Cape Breton.

Polling district  
No. 21 in Cape  
Breton County  
established.

There shall be a further additional polling district in the County of Cape Breton, to be called and known as polling district No. 21, Loch Lomond, and to embrace such portions of polling districts Nos. 7 and 13 as are enclosed within the following limits, that is to say:—Beginning on the division line between East Bay, south side, and Big Pond district, at a point on said line two miles southerly from the bridge over Rory Brae's Brook on the Big Pond post road, and about three-quarters of a mile northerly from the Glengarry road; thence on a line about south 68° west and through the wilderness and barrens to the division line between Counties of Richmond and Cape Breton at a point two and a half miles on said line in rear of Irish Cove; thence following said county line south-easterly to the southwest corner of the district of Grand Mira, as erected by chapter number 39 of the Acts of 1884; thence on a line north 30° east, being the western boundary of said Grand Mira district until it strikes the south-eastern boundary of the district of East Bay, south side, as erected and described by said chapter number 39 of the

Acts of 1884; thence following said boundary and Salmon River up stream to the southernmost corner of polling district No. 8, as existing before the passing of said chapter number 39 of the Acts of 1884; thence following the division line between the said district No. 8 and district No. 13, as existing before the passing of said chapter number 39 of the Acts of 1884, northerly to the place of beginning—the polling place to be at or near John McDonald's cross road, south side of Loch Lomond.

112. Chapter 36 of the Acts of 1880 and chapter 42 of the Acts of 1882, are repealed, and the boundary lines of the several polling districts in the County of Inverness, mentioned in said chapters, shall be as they were before the passing of the said chapters except as affected by chapter 41 of the Acts of 1882 and chapter 47 of the Acts of 1883. The various polling districts in the said County of Inverness as they have existed since the passing of chapter 52 of the Acts of 1884, having each a population, according to the census of 1881, of two thousand or upwards, to wit, the districts of Port Hastings, Judique, and Cheticamp, shall each return and be represented by two municipal councillors.

Port Hastings, Judique, and Cheticamp, in Inverness Co., to have two councillors each.

113. (1.) Polling district number four in the County of Cumberland is divided so as to make two separate polling districts, which said districts shall be described as follows, that is to say: All that portion thereof beginning where Tillott's Creek intersects the line between polling districts numbers two and four, near Thompson station; thence following the said creek until it comes to the River Philip; thence following down said river until it comes to the Intercolonial railway; thence westerly along the Intercolonial railway until it comes to the Halifax road; thence following the said road a short distance until it comes to the junction of the old road leading over Birch Hill; thence following said old road until it strikes the said Halifax road at or near Isaac Stewart's; thence following said Halifax road until it intersects the line between polling districts numbers four and one; thence following the boundaries of said number four until it comes to the place of beginning, and to include all on the north side of the Intercolonial railway at River Philip station; and the polling place of such district, to be known as number four, shall be at or near the drill shed.

Polling district No. 4 in Cumberland County divided.

(2.) All that portion of said polling district number four as existing previous to the passing of Chapter 43 of the Acts of 1884, not included in the boundaries given in sub-section (1) of this section, shall be a separate polling district, to be known as polling district number

Polling district No. 15 in Cumberland County established.

CHAP. 56. fifteen, and the polling place of such district shall be at or near the district gaol, Oxford.

No. 4, Cumberland, to have only one councillor. (3.) Polling district number four is no longer entitled to elect two councillors to the Municipal Council, but each of the said polling districts is entitled to elect one councillor.

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SCHEDULE.

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COLCHESTER COUNTY.

Polling district No.	4—	Lower Stewiacke .....	2
"	"	11—Tatamagouche .....	2

CUMBERLAND COUNTY.

Polling district No.	1—	Amherst .....	3
"	"	3—Tidnish and Goose River.....	2
"	"	7—Pugwash.....	2
"	"	8—Wallace .....	2
"	"	11—Parrsborough.....	2

PICTOU COUNTY.

Polling district No.	17—	Hopewell .....	2
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KINGS COUNTY.

Polling district No.	1—	Canning .....	2
"	"	6—Kentville .....	2

ANNAPOLIS COUNTY.

Polling district No.	1—	Wilmot .....	2
"	"	10—Annapolis town.....	2

DIGBY COUNTY.

Polling district No.	1—	Digby town .....	2
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CLARE DISTRICT.

Polling district No.	10—	Meteghan .....	2
"	"	11—Court house .....	2

LUNENBURG COUNTY.

Polling district No.	1—	Lunenburg .....	2
"	"	3—Block House .....	2
"	"	9—Bridgewater .....	2

CHESTER DISTRICT.

Polling district No.	6—	Chester .....	2
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## SHELburnE DISTRICT.

Polling district No.	1—North East Harbor.....	2
" " "	3—Shelburne .....	2
" " "	6—Lockeport .....	2
" " "	7—Louis Head. ....	2

## BARRINGTON DISTRICT.

Polling district No.	5—Shag Harbor.....	2
" " "	7—Barrington.....	2

## ARGYLE.

Polling district No.	—Tusket .....	2
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## ANTIGONISH COUNTY.

Polling district No.	4—Antigonish .....	2
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## GUYSBOROUGH COUNTY.

Polling district No.	1—Guysborough.....	2
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## ST. MARY'S.

Polling district No.	—Sherbrooke.....	2
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## VICTORIA COUNTY.

Polling district No.	3—Baddeck .....	2
" " "	—Boulardarie .....	2

## INVERNESS COUNTY.

Polling district No.	5—Mabou .....	2
" " "	Port Hastings .....	2
" " "	Judique .....	2
" " "	Cheticamp .....	2

## HANTS COUNTY.

Brooklyn .....	2
Scotch Village .....	2
St. Croix.....	2
Kempt .....	2
Noel .....	2
Nine Mile River .....	2
Shubenacadie.....	2
Gore .....	2
Maitland.....	3



CHAP. 57.

## OATHS.

## SCHEDULE OF OATHS.

*Oath of Office to be taken by all persons appointed to any office or duty under this Chapter, for which no oath of office is specially provided.*

I, A. B., do solemnly swear (or affirm when the party is entitled to affirm) that I will truly, faithfully and impartially to the best of my knowledge and ability execute the office of (inserting the name of the office, as presiding officer, or clerk of the elections, or warden, councillor, county clerk, &c., &c., as the case may be) to which I have been elected (or appointed) in this municipality, and that I have not received, and will not receive, any payment or reward, or promise of such, for the exercise of any partiality, or malversation, or other undue execution of the said office. So help me God.

*Oath of office for the auditors.*

I, A. B., do solemnly swear (or affirm when the party is entitled to affirm) that I will faithfully and impartially to the best of my knowledge and ability execute the office of auditor to which I have been appointed in this municipality, and that I have not received and will not receive any payment or reward, or promise of such, for the exercise of any partiality or malversation, or other undue execution of the said office; and that I have not, during the time preceding my appointment to the said office of auditor, and that I have not since had, and that I have not now, directly or indirectly, any share or interest whatever in any contract or employment, with, by, or on behalf of the municipal corporation of ————. So help me God.

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 CHAPTER 57.

 OF CONTROVERTED ELECTIONS OF MUNICIPAL AND TOWN  
 COUNCILLORS, AND OF CORRUPT PRACTICES.

Meaning of terms 1. The following terms shall in this Chapter have the meanings hereinafter assigned to them unless there is something in the context repugnant to such construction, that is to say: "Election" shall mean an election of municipal or town councillors, or of a warden or mayor of an incorporated town. "Candidate" shall mean any person who has been duly nominated at such an election.

“Corrupt practices” or “corrupt practice” shall mean CHAP. 57. bribery and undue influence and illegal and prohibited acts in reference to elections or any of such offences as defined by Act of the Legislature. “Rules of court” shall mean rules to be made as hereinafter mentioned. “Prescribed” shall mean prescribed by the rules of court.

2. A petition complaining of an undue election of a Election petitions, how presented. municipal councillor for any district, or a warden or mayor for any incorporated town, or town councillor for any ward of such town, may be presented to the judge of the county court for the district in which the controverted election occurred, by any one or more of the following persons:—

(1.) Some person who voted or who had a right to vote at the election to which the petition relates.

(2.) Some person claiming to have had a right to be returned or elected at such election.

(3.) Some person alleging himself to have been a candidate at such election.

And such petition is hereinafter referred to as an election petition.

3. The following enactments shall be made with respect Enactments as to presentation. to the presentation of an election petition under this Chapter:

(1.) The petition shall be signed by the petitioner, or all the petitioners if more than one.

(2.) The petition shall be presented within twenty-one days after the day of the election to which the petition relates, unless it questions the election upon an allegation of corrupt practices, and specifically alleges a payment of money or other reward to have been made by any councillor or town warden or mayor, or on his account, or with his privity since the time of such return, in pursuance or in furtherance of such corrupt practice, in which case the petition may be presented at any time within twenty-one days after the date of such payment.

(3.) Presentation of a petition shall be made by delivering it to the clerk of the county court in the county to which the petition relates, or leaving the same at his office between the hours of ten of the clock in the forenoon and four of the clock in the afternoon.

(4.) At the time of the presentation of the petition, or within three days afterwards, security for the payment of all costs, charges and expenses that may become payable by the petitioner,

(a.) To any person summoned as witness on his behalf, or

(b.) The councillor, mayor or warden whose election is complained of (who is hereinafter referred to as the respondent.)

Shall be given on behalf of the petitioner.

CHAP. 57.

(5.) The security shall be to an amount of two hundred dollars; it shall be given either by recognizance to be entered into by any number of sureties not exceeding four, or by a deposit of money in manner prescribed, or partly in one way and partly in the other. All sureties shall justify.

Objections to security, &c.

4. Any objection made to the security given shall be heard and decided on in the prescribed manner. If an objection to the security is allowed it shall be lawful for the petitioner within a further prescribed time not exceeding five days to remove such objection by a deposit in the prescribed manner of such sum of money as may be deemed by the judge or officer having cognizance of the matter to make the security sufficient. If on objection made the security is decided to be insufficient, and such objection is not removed in manner hereinbefore mentioned, no further proceedings shall be had on the petition; otherwise on the expiration of the time limited for making objections, or after objection made on the sufficiency of the security being established, the petition shall be deemed to be at issue.

Trial of election petitions.

5. The trial of every election petition shall be conducted before a judge of the county court in the district in which the election controverted was held, or the judge presiding in his stead for the reasons mentioned in the Acts relating to county courts. Every election petition shall be tried by the judge sitting in open court without a jury.

What notice of trial necessary.

6. Notice of the time and place at which an election petition will be tried shall be given not less than fourteen days before the day on which the trial is held in the prescribed manner.

Trial, where to take place.

7. The trial of an election petition shall take place in the municipality or town to which the petition relates; provided the judge of the county court shall have jurisdiction to try any election petition in any city or incorporated town situate within the boundaries of the municipality or municipal district, notwithstanding that such city or incorporated town is exempted from the jurisdiction of the municipality.

Adjournment of trial.

8. The judge presiding at the trial may adjourn the same from time to time, and from any one place to any other place within the municipality, as to him may seem expedient.

Judge to determine who was elected.

9. At the conclusion of the trial the judge who tried the petition shall determine whether the councillor, or warden, or mayor, whose return or election is complained of, or any and what other person, was duly returned or elected, or whether the election was void, and shall forth-

with certify in writing such determination to the clerk of CHAP. 57.  
the town or municipality.

10. When any charge is made in an election petition of any corrupt practice having been committed at the election to which the petition refers, the judge shall, in addition to such certificate and at the same time, report in writing to the municipality or town clerk as follows:—

Judge to certify and report as to corrupt practices

(a.) Whether any corrupt practice has or has not been proved to have been committed by or with the knowledge and consent of any, and which, candidate at such election, and the nature of such corrupt practices.

(b.) The names of any persons who have been proved at the time to have been guilty of any corrupt practice.

(c.) Whether corrupt practices have, or whether there is reason to believe that corrupt practices have, extensively prevailed at the election to which the petition relates.

11. The clerk of the town or municipality shall, at the earliest practicable moment after he receives the certificate and report (if any) of the judge, give the necessary directions and adopt all the proceedings necessary for confirming or altering the return, or for the issuing of a new order for a new election, or for otherwise carrying the determination of the judge into execution, as circumstances may require. He shall also without delay, if the council be then sitting, or if it be not then sitting at the beginning of the then next meeting of the council, communicate to the council the determination, report, and certificate of the judge, and his own proceedings thereon.

Duty of clerk.

12. On the trial of an election petition under this Chapter, unless the judge otherwise directs, any charge of a corrupt practice may be gone into, and evidence in relation thereto received, before any proof has been given of agency on the part of any candidate in respect of such corrupt practice.

Proceedings on trial.

13. An election petition under this Chapter shall be in such form and state such matters as may be prescribed.

Form, &c., of petition.

14. An election petition under this Chapter shall be served in such manner as may be prescribed.

Service of petition.

15. Two or more candidates may be made respondents to the same petition, and their case may for the sake of convenience be tried at the same time; but for all the purposes of this Chapter such petition shall be deemed to be a separate petition against each respondent.

Number of respondents.

16. Where under this Chapter more petitions than one are presented relating to the same election or return, all such petitions shall in the election list be bracketed together, and shall be dealt with as one petition; but such petitions shall stand in the election list in the place where

Petitions to be bracketed.

**CHAP. 57.** the last of such petitions would have stood if it had been the only petition presented, unless the judge shall otherwise direct.

Judges of county courts may make rules.

17. The county court judges or a majority of them may from time to time make and alter and revoke general rules and orders for the effectual execution of this Chapter, and of the intention and objects thereof, and the regulation of the practice, procedure and costs of election petitions, and the trial thereof, and the certifying and reporting thereon; and such rules and orders shall be subject to the same provision as relates to the ordinary rules of procedure in county courts.

Force and scope of rules.

18. Any general rules and orders made as aforesaid shall be deemed to be within the powers conferred by this Chapter, and shall from the date of their publication in the *Royal Gazette* be of the same force as if they were enacted in the body of this Chapter.

Rules to be submitted to Legislature.

19. Any general rules and orders made in pursuance of this Chapter shall be laid before the House of Assembly within three weeks after they are made, if the Legislature be then sitting, and if the Legislature be not then sitting within three weeks after the beginning of the then next session of the Legislature.

Practice before rules made.

20. Until rules of court have been made in pursuance of this Chapter, and so far as such rules do not extend, the principles, practice, and rules on which the Supreme Court and its judges have heretofore acted in dealing with election petitions shall be observed so far as may be by the judge in the case of election petitions under this Chapter.

Expenses, how defrayed.

21. All expenses properly incurred by the sheriff in providing him with a proper court shall be defrayed from the municipal or town treasury.

Powers of judge on trial.

22. On the trial of an election petition under this Chapter the judge shall, subject to the provisions of this Chapter, have the same powers, jurisdiction, and authority as a judge of the county court now possesses during term or sittings of the county court, and the court held by him shall be a court of record.

Attendance of witnesses.

23. Witnesses shall be subpoenaed and sworn in the same manner as nearly as circumstances admit as in ordinary trials.

Compulsory attendance.

24. On the trial of an election petition under this Chapter the judge may by order under his hand compel the attendance of any person as a witness who appears to him to have been concerned in the election to which the petition refers, and any person refusing to obey such order shall be guilty of contempt of court.

25. The judge may examine any witness so compelled CHAP. 57. to attend or any person in court, although such witness is Examination of witnesses. not called.

26. The fees for travel and attendance payable to any Witnesses' fees. person appearing to give evidence at the trial of an election petition under this Chapter shall be the same, and payable in the same manner, as those allowed to witnesses in the Supreme Court, and may be allowed to such person by a certificate under the hand of the judge; and such fees, if the witness was called and examined by the judge, shall be deemed part of the expenses of providing a court, and in other cases shall be deemed to be costs of the petition.

27. An election petition under this Chapter shall not Withdrawal of petition. be withdrawn without the leave of the court or judge, upon special application to be made in and at the prescribed manner, time and place.

28. No such application shall be made for the with- Notice of withdrawal. drawal of a petition until the prescribed notice has been given in the municipality or town to which the petition relates of the intention of the petitioner to make an application for the withdrawal of his petition.

29. On the hearing of the application for withdrawal, Substitution of petitioner. any person who might have been a petitioner in respect of the election to which the petition relates may apply to the judge to be substituted as a petitioner for the petitioner so desirous of withdrawing the petition.

30. The judge may if he think fit substitute as a Mode of substitution. petitioner any such applicant as aforesaid; and may further, if the proposed withdrawal is in the opinion of the judge induced by any corrupt bargain or consideration, by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum named in such security the original petitioner shall be liable to pay the costs of the substituted petitioner.

31. If no such order is made with respect to the Security for substituted petitioner. security given on behalf of the original petitioner, security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition, and within the prescribed time of the order of substitution.

32. Subject as aforesaid a substituted petitioner shall Position of substituted petitioner. stand in the same position as nearly as may be, and be subject to the same liabilities, as the original petitioner. If

**CHAP. 57.** a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent.

**When more than one petitioner.** 33. Where there are more petitioners than one no application to withdraw a petition shall be made except with the consent of all the petitioners.

**Judge to report.** 34. In every case of the withdrawal of an election petition under this Chapter, the judge shall report to the municipality or town clerk whether in his opinion the withdrawal of such petition was the result of any corrupt arrangement, or in consideration of the withdrawal of any other petition, and if so, the circumstances attending the withdrawal.

**Petition, how abated.** 35. An election petition under this Chapter shall be abated by the death of a sole petitioner, or of the survivor of several petitioners.

**Liability for costs.** 36. The abatement of a petition shall not affect the liability of the petitioner to the payment of costs previously incurred.

**Notice to be given in certain cases.** 37. If before the trial of any election petition under this Chapter any of the following events happen in the case of the respondent, that is to say :

(1.) If he dies ;

(2.) If he resigns his seat ;

(3.) If he gives in and at the prescribed manner and time, notice to the court that he does not intend to oppose the petition ;

Notice of such event having taken place shall be given in the municipality or town to which the petition relates, and within the prescribed time after the notice is given any person who might have been a petitioner in respect of the election to which the petition relates may apply to the judge to be admitted as a respondent to oppose the petition, and such person shall on such application be admitted accordingly, either with the respondent, if there be a respondent, or in place of the respondents ; and any number of persons not exceeding three may be so admitted.

**Disability of respondent.** 38. A respondent who has given the prescribed notice that he does not intend to oppose the petition shall not be allowed to appear or act as a party against such petition in proceedings thereon, and shall not sit or vote in the municipality or town council until the council has been informed of the report on the petition, and the judge shall in all cases in which such notice has been given in the prescribed time and manner, report the same to the municipality or town clerk.

**Costs, &c., by whom defrayed.** 39. All costs, charges, and expenses of and incidental to the presentation of a petition under this Chapter, and to the proceedings consequent thereon, with the exception of

such costs, charges and expenses as are by this Chapter CHAP. 57. otherwise provided for, shall be defrayed by the parties to the petition in such manner and in such proportions as the judge may determine, regard being had to the disallowance of any costs, charges or expenses, which may in the opinion of the judge have been caused by vexatious conduct, unfounded allegations or unfounded objections, on the part either of the petitioner or respondent, and regard being had to the discouragement of any needless expense, by throwing the burden of defraying the same on the parties by whom it has been caused, whether such parties are or are not on the whole successful. The costs may be taxed in the prescribed manner, but according to the same principles as costs between parties in actions at law ; and such costs may be recovered in the same manner as the costs of an action at law, or in such other manner as may be prescribed.

40. If any petitioner in an election petition presented under this Chapter, neglect or refuse for the space of one month after demand to pay to any person summoned as a witness on his behalf, or to the respondent, any sum certified to be due to him for his costs, charges, and expenses, and if such neglect or refusal be within three months after such demand proved to the satisfaction of the judge, in every such case every person who has entered into a recognizance relating to such petition under the provisions of this Chapter shall be held to have made default in his said recognizance, and the clerk of the municipality or town council in the county or town in which the trial of such petition shall have taken place, or other prescribed officer, shall thereupon certify such recognizance to be forfeited, and the same shall be thereupon estreated, and all moneys received or recovered by reason or in pursuance of the estreating or otherwise proceeding on such recognizance, shall be paid to the prescribed officer, and all such moneys and all moneys paid in as securities on the presentation of an election petition, shall be applied as the judge may direct, in pursuance of the condition of the recognizance herein provided for. Estreat of recognizance.

41. Where it is found by the report of the judge upon an election petition under this Chapter that any corrupt practice has been committed by or with the knowledge and consent of any candidate at any election, his election, if he has been elected, shall be void, and he shall during the two years next after the date of his being so found guilty be incapable of being elected a municipal or town councillor or warden or mayor, and of being registered as a voter and of voting at any election, and of holding any office at the nomination of the Lieutenant-Governor, or Effect of corrupt practices.



**CHAP. 57.** any municipal office, or of being appointed or acting as a justice of the peace.

**Elector's vote nullified.** 42. If on the trial of any election petition it is proved that any corrupt practice has been committed by any elector voting at an election, his vote shall be null and void.

**Candidate's election vacated.** 43. If on the trial of any election petition under this Chapter any candidate is proved to have personally engaged at the election to which such petition relates as a canvasser or agent in relation to the election, any person knowing that such person has within two years previous to such engagement been found guilty of any corrupt practice by any competent legal tribunal, or by the report of the judge upon an election petition under this Chapter, the election of such candidate shall be void.

**Disability of elector.** 44. Any person other than a candidate found guilty of any corrupt practice in any proceeding in which after notice of the charge he has an opportunity of being heard, shall during the five years next after the time at which he is so found guilty be incapable of being elected municipal or town councillor or warden or mayor of a town, and of being registered as a voter, and of voting at any election, and of holding any office at the nomination of the Lieutenant-Governor, or any municipal office, or of being appointed or acting as a justice of the peace.

**Perjury of witness.** 45. If at any time after any person has become disqualified by virtue of this Chapter the witnesses or any of them on whose testimony such person shall have so become disqualified shall upon the prosecution of such person be convicted of perjury in respect of such testimony, it shall be lawful for such person to move the judge to order, and the judge shall upon being satisfied that such disqualification was procured by reason of perjury, order that such disqualification shall thenceforth cease and determine, and the same shall cease and determine accordingly.

**Neglect of presiding officer.** 46. If any presiding officer wilfully delays, neglects or refuses to return any person who ought to be returned as municipal councillor for any county or town, or warden or mayor of any incorporated town, such person may, in case it has been determined on the hearing of an election petition under this Chapter that such person was entitled to have been returned, sue the officer having so wilfully delayed, neglected or refused duly to make such return of his election, in any court of record in Nova Scotia, and shall recover double the damages he has sustained by reason thereof, together with full costs of suit, provided such action be commenced within one year after the commission of the act on which it is grounded, or within

six months after the conclusion of the trial relating to CHAP. 57.  
such election.

47. In reckoning time for the purposes of this Chapter, <sup>Holidays excluded.</sup> Sunday, Christmas Day, Good Friday and any day set apart for a public fast or public thanksgiving shall be excluded.

48. No election or return of a municipal or town councillor, or warden or mayor of any incorporated town, shall be questioned except in accordance with the provisions of this Chapter. <sup>Election, where to be questioned.</sup>

49. Where an election petition complains of the conduct of a sheriff or presiding officer, such sheriff or presiding officer shall, for all purposes of this Chapter, except the admission of respondents in his place, be deemed a respondent. <sup>Sheriff, when deemed a respondent.</sup>

50. A petition under this Chapter complaining of no return may be presented to the judge, and shall be deemed to be an election petition within the meaning of this Chapter, and the judge may make such order thereon as he thinks expedient for compelling a return to be made, or may order such petition to be heard by him in manner hereinbefore provided with respect to ordinary election petitions. <sup>Return may be compelled.</sup>

51. On the trial of a petition under this Chapter complaining of an undue return and claiming the seat for some person, the respondent may give evidence to prove that the election of such person was undue, in the same manner as if he had presented a petition complaining of such election. <sup>Evidence of undue election</sup>

52. Any person who according to the law for the time being is entitled to practise as an attorney or solicitor in Nova Scotia, may practise as agent or attorney, and any person who by the law for the time being is entitled to practise as a barrister-at-law may practise as a counsel in cases of election petitions and all matters relating to elections. <sup>Who permitted to practise.</sup>

#### PREVENTION OF CORRUPT PRACTICES.

53. No candidate shall at any election, nor shall any other person acting on his behalf, either provide or furnish drink or other refreshment to any elector during such election, from nomination day to polling day, both inclusive, or pay for, procure, or engage to pay for any such drink or other refreshment. <sup>Drink not to be furnished.</sup>

54. No candidate or any other person shall furnish or supply any ensign, standard or set of colors, or any other flag to or for any person or persons whomsoever, with intent that the same should be carried or used in any <sup>Flags, &c., not to be furnished.</sup>

CHAP. 57. municipality on the day of election, or within eight days before such day, or during the continuance of such election or the polling, by such person or any other as a party flag to distinguish the bearer thereof, and those who may follow the same, as the supporters of such candidate, or of the political or other opinions entertained or supposed to be entertained by such candidate; nor shall any person for any reason carry or use any such ensign, standard or set of colors, or other flag as a party flag, within such municipality or town on the day of any such election or polling, or within eight days before such day, or during the continuance of such election.

Ribbons, &c.,  
not to be fur-  
nished.

55. No candidate or other person shall furnish or supply any ribbon, label or like favor to or for any person whomsoever, with intent that the same should be worn or used within such municipality or town on the day of election or polling, or within eight days before such day, or during the continuance of such election, by such person or any other, as a party badge to distinguish the wearer as the supporter of such candidate, or of the political or other opinions entertained by such candidate; nor shall any person use or wear any ribbon, label or other favor, as such badge either on his person or affixed to any horse or vehicle within such municipality or town on the day of any such election or polling, or within eight days before such day, or during the continuance of such election.

Punishment by  
fine, &c.

56. Every person offending against any of the provisions of the three next preceding sections shall, on summary conviction before two justices of the peace or a stipendiary magistrate, be punishable by fine not exceeding fifty dollars, in the discretion of the court.

Liquors not to  
be sold.

57. No spirituous or fermented liquors or strong drinks shall be sold or given at any hotel, tavern or shop, or other place whatever within the limits of any polling district during the whole of the polling day at any election, under a penalty of fifty dollars for every offence, on summary conviction before two justices of the peace or a stipendiary magistrate.

Liability of can-  
didate.

58. Every candidate who corruptly by himself or by or with any person, or by any other ways or means on his behalf, or with his knowledge and consent, at any time either before or during any election, directly or indirectly gives or provides, or causes to be given or provided, or is accessory to the giving or providing, or pays wholly or in part any expenses incurred for any meat, drink, refreshment or provision to or for any person, in order to be elected or for being elected, or for the purpose of corruptly influencing such person or any other person to give or refrain from

giving his vote at such election, shall be deemed guilty of the offence of treating, and shall forfeit the sum of one hundred dollars to any one who shall sue for the same, with full costs of suit, in addition to any other penalty to which he may be liable therefor under any other provision of this Chapter; and on the trial of an election petition, there shall be struck off from the number of votes given for such candidate one vote for every person who shall have voted, and is proved on such trial to have corruptly accepted or taken any such meat, drink, refreshment or provision. And the giving or causing to be given to any voter on the nomination day or day of polling, on account of such voter having voted or being about to vote, any meat, drink or refreshment, or any money or ticket to enable such voter to procure refreshment, shall be deemed an unlawful act, and the person so offending shall forfeit the sum of ten dollars for each offence to any person suing for the same, with full costs of suit, or shall suffer imprisonment for a term not exceeding ten days.

59. The hiring or promising to pay or paying for any horse, team, carriage, cab or other vehicle, by any candidate or by any person on his behalf, to convey any voter or voters to or from the poll, or to or from the neighborhood thereof at any election, or the payment by any candidate, or by any person on his behalf, of the travelling and other expenses, of any voter, in going to or returning from any election, shall be unlawful acts; and the person so offending shall forfeit the sum of fifty dollars to any person who shall sue for the same; and any voter hiring any horse, cab, cart, waggon, sleigh, carriage, or other conveyance for any candidate, or for any agent of a candidate, for the purpose of conveying any voter or voters to or from the polling place or places, shall *ipso facto* be disqualified from voting at such election, and for every such offence shall forfeit the sum of twenty-five dollars to any person suing for the same.

Cab hiring prohibited.

60. From every order and decision of the judge there shall be an appeal to the Supreme Court, in the manner and with the procedure as nearly as may be as applies to appeals in cases over forty dollars, and all appeals to the Supreme Court under this Chapter shall be heard and determined by the court as soon as practicable after their entry for argument, whatever may be their position on the docket of arguments.

Appeal to Supreme Court.

61. No bill of costs to be taxed in any election petition under this Chapter shall exceed one hundred dollars.

Limit of taxed costs.

CHAP. 57.

## SCHEDULE.

*Form of affidavit on production of books and papers.*

In the \_\_\_\_\_ Court.  
 Election for \_\_\_\_\_ holden on the \_\_\_\_\_ day  
 of \_\_\_\_\_ A. D.  
 I, \_\_\_\_\_ of \_\_\_\_\_, make oath and say :

(1.) That I have in my possession or power the documents relating to the matters in question set forth in the first and second parts of the first schedule hereto annexed.

(2.) I object to produce the said documents set forth in the second part of the said first schedule.

(3.) *(State upon what grounds objection is made, and verify the facts as far as may be.)*

(4.) I have had, but have not now in my possession or power, the documents relating to the matters in question, set forth in the second schedule hereto annexed.

(5.) The last mentioned documents were last in my possession or power on *(state when.)*

(6.) *(State what has become of the last mentioned documents, to whom you have given them, and in whose possession they now are.)*

(7.) According to the best of my knowledge, remembrance, information and belief, I have not now and never had in my own possession, custody or power, or in the possession, custody or power of my agents or attorneys, agent or attorney, or in the possession, custody or power of any other person on my behalf, any deed, account, book of accounts, minutes, vouchers, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document or other document whatever, relating to the matters in question, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the first and second schedules hereto annexed.

Sworn, &c.

*(Annex the schedules mentioning the documents in question.)*

## CHAPTER 58.

## OF MUNICIPAL ASSESSMENTS.

1. The council of each municipality at the regular January meeting in each year may make necessary provisions for the erection or repairs of lock-up houses and the payment of keepers thereof; for the purchase, erection, hiring or repairing of market or town houses; for the providing of hay scales, weights and appurtenances; for sets of weights and scales, and for measures for any necessary places within the municipality; and the sums necessary for such purposes shall be added to the amount to be assessed upon the municipality for the current year.

Provisions to be made by municipal council in certain cases.

2. It shall be the duty of the council of each municipality at each regular January meeting to make necessary provisions for the building or repairing of a jail or the appurtenances thereof, a court house or sessions house, and for fuel and light for the use of the same; for the erecting and repairing of pounds and providing bolts, bars and shackles, and also for conveying persons accused of crimes to jail when the distance shall be three miles and upwards at a rate not over ten cents per mile for each person so accused; for the decent support of poor criminals or poor debtors in jail; for the salary of the treasurer of the municipality; for a salary to the clerk of the municipality of not less than one hundred dollars; for the maintenance of a jailer; for the paying of criers for the several courts; for defraying the expenses of poor witnesses on the trials of persons accused of criminal offences; for defraying the charges of public executions and of conveying criminals under sentence to their places of confinement; for defraying the expenses of persons sentenced to confinement and labor within the municipality, and procuring materials for such labor; for paying extraordinary expenses ordered by the council to constables, and incurred in execution of their duty in cases of riot or felony; for paying officers, non-commissioned officers and men of the militia of Canada called out on the requisition in writing of the warden or of three magistrates in aid of the civil power in case of riot, disturbance or other emergency; for paying allowances to special constables ordered by the council about executing or assisting, or trying to execute warrants for felony or misdemeanor; for expenses incurred or necessary to be raised about repairing bridges or laying out roads within the municipality; for expenses incurred about removing municipal rates by certiorari or otherwise, or in prosecuting

Further provisions to be made by municipal council in certain cases.

CHAP. 58. or defending any action or proceeding at law respecting such municipal affairs.

What real and personal estate liable to taxation

3. For all purposes for which local and direct taxes are and shall be levied by authority of law, unless otherwise specially provided for by law, all land and all such personal property as is hereinafter defined, whether owned by individuals, co-partners or corporations, shall be liable to taxation, subject to the exceptions hereinafter specified; and the occupant of any crown land shall be liable to taxation for the land so occupied, but such land shall not be chargeable for the same.

Definition of terms.

4. The words "personal estate" and "personal property," when they occur in this Chapter, shall be understood to include all such goods, chattels and other property as are enumerated in Schedule A, hereto annexed, and no other; and the term "property" shall include both real and personal property.

Exemptions.

5. The following property shall be exempted from taxation, viz.: first, lands belonging to Her Majesty or held in trust for Her Majesty for the public uses of the Province; secondly, every place of worship, every church yard or burial ground, the real estate of every college, academy or other institution of learning, every public school house, town hall, court house, lock-up house, temperance hall, all public landings, public breakwaters and public wharves, all school lands, and the property of every township or town, city or county, if occupied for the purposes thereof, or if unoccupied; thirdly, the Provincial Penitentiary and the land attached thereto, the Hospital for the Insane and the land attached thereto, the Provincial railway, rolling stock, and railway stations and lands attached thereto or to the railway; fourthly, lands belonging to any widow, or minor, or school teacher to the amount of four hundred dollars; fifthly, funds invested in provincial debentures; sixthly, the produce of any farm being the property of the person who raised or produced the same, and being intended and reasonably necessary for actual consumption on such farm.

Poll tax, proportions, and upon whom.

6. One fourth and no more of all local and direct taxes shall be levied and assessed by an equal rate as a poll tax on all male persons living within the district of the age of twenty-one years and not being paupers; and the other three fourths shall be levied and assessed upon the whole taxable real and personal property of the locality to be taxed in proportion to the assessed value thereof, and not upon any one or more kinds or species of property in particular; provided such poll tax shall not exceed the sum of thirty cents on any individual; but the council in

Proviso.

any municipality may order the whole amount to be levied and assessed solely upon real and personal estate. CHAP. 58.

7. In making up the assessment roll the assessors shall be governed by the following rules:— Assessment roll; rules for.

(1.) The assessors in making up the assessment roll shall follow the divisions into polling districts, and shall arrange separately in alphabetical order the names of the rateable inhabitants of each polling district. Districts.

(2.) Where the owner or occupier is resident within the municipality the assessors for the district within which he resides shall include in the roll the whole of his assessable property. To include all assessable property of residents.

(3.) If such property be situate in different districts of the municipality, it shall be so discriminated in the assessment roll as to shew for what amount he is assessable in each district. When in different districts.

(4.) Where the owner or occupier is not resident within the municipality, or is unknown, and the lands are unoccupied, the lands shall be assessed as lands of non-residents in each separate district in which they lie. Non-residents.

(5.) Where the owner of lands which are occupied by another party as tenant for any period less than one year resides within the municipality, the lands shall be estimated as property of the owner saving his recourse against the occupier; and where the owner of the lands is not resident within the municipality they shall be estimated as the property of the occupier. Tenants.

(6.) In making up the assessment roll the assessors shall not be required to enter upon it the name of any person whom the assessors shall deem to be unable to pay the rate. Persons unable to pay to be omitted.

8. Between the first day of November and the first day of December in each year, the assessors appointed by the municipal council for each municipality shall proceed to ascertain by diligent inquiry the names of all the taxable inhabitants, and also all taxable property within the same, its extent, amount and nature. They shall then prepare an assessment roll, in which shall be set down in different columns and according to the best information in their power, the names of all taxable parties in the township or district, with the extent or amount of property assessable against each under the provisions of this Chapter, and containing the particulars mentioned in Schedule B, for each of the items of which the assessment roll shall contain a separate column. Time in which assessment roll to be made.

9. The lands of non-residents shall be designated in the assessment roll, but in a separate part of it under the head of "assessment roll of non-residents' lands," which Lands of non-residents.



CHAP. 58. shall contain the several particulars specified in that part of Schedule B which refers to such lands.

Property how  
valued. 10. All real and personal property liable to taxation shall be estimated by the assessors at its actual cash value.

Completion of  
roll. 11. The assessors shall complete the roll on or before the tenth day of January in each year, and they or a majority of them shall forthwith thereafter sign the same, first attaching thereto a certificate in the following form :

Certificate. " We do severally certify that we have set out in the above assessment roll all the real and personal property liable to taxation within the municipality owned or occupied by persons residing within our district, and all the real and personal property within our district owned or occupied by persons not residing within the municipality liable to taxation within our district, and the actual value thereof in each case, according to our best information and judgment. (*In municipalities where poll tax is levied add the following :*) We further certify that we have in such roll set down the names of all the inhabitants within such district subject to poll tax."

Roll, when for-  
warded to clerk  
of municipality  
and posted. 12. The roll thus certified shall be forthwith forwarded to the clerk of the municipality ; and a true copy thereof, similarly certified, to be made by the assessors, shall be forthwith posted up by them in some public and conspicuous place within the township or district for which they are assessors, for the information of all parties concerned.

County and poor  
rates. 13. From such roll the county rates and poor rates shall be made as follows :

Residents. (1.) Any party residing within the municipality shall be taxed for his county rate in one sum, which shall be collected by the collector of the district where he resides.

Poor rates. (2.) Such party shall be taxed for his poor rate in each district where his taxable property lies, and the same shall be collected by the several collectors of the poor rates in the several districts.

Non-residents. (3.) Where the party taxable is a non-resident or unknown, his property shall be taxable for both poor and county rates in the district where such property lies.

Clerk of muni-  
cipality to make  
out county rates. 14. The clerk of the municipality shall, on or before the first day of April in every year, make out from such roll the county rate for each township or district, containing the particulars mentioned in Schedule C, or other particulars to the like effect.

Assessors to fur-  
nish clerk of poor  
district with copy  
of roll. 15. The assessors shall furnish to the clerks of the poor districts within their limits a certified copy of the roll forwarded by them to the clerk of the municipality ; and within thirty days after the receipt thereof the clerk of the poor district shall make out the poor rate for his

district, containing the same particulars as the county rate collector's roll, making allowance for necessary differences, and place the same in the hands of the collectors. CHAP. 58.

16. On the assessment roll, whether of county or poor rates, shall be set down the name of each party assessed, the amount of his poll tax (if any), the correct assessed value of the real and personal property of each party for which such party is taxable; and there shall also be put down on such roll the true valuation of the lands of non-residents opposite to the names of such non-residents, and also the amount chargeable upon such lands. Assessment roll.

17. The clerk of the municipality shall deliver the roll so made by him to the collectors appointed by the council for each township or district. To be delivered to collectors by clerk of municipality.

18. The town clerk or clerk of the poor district shall deliver the collector's roll of poor rates so made by him to the collectors, who shall be appointed as hereinafter mentioned. Collector's rolls of poor rates.

19. The council shall fix the time within which the collector shall collect and pay over the amount of his roll; and the collector within such time shall collect and pay over the amount of his roll to the treasurer. It shall be the duty of the collector of either poor or county rates to receive the taxes assessed upon the property of non-residents, if the same be rendered within the time of his collection. Duty of collector

20. As regards the lands of non-resident owners named in the collector's roll, it shall be the duty of such collector, where the owner is known to him, to transmit by post a statement and demand of the charges taxed against him in the roll. Non-resident owners.

21. If the taxes be not paid within twenty days thereafter, the collector may apply to two justices of the peace; and upon affidavit being made of such statement and demand having been duly mailed by the collector and that the taxes are unpaid, and upon their being satisfied that there can be found on the lands sufficient timber, wood, poles or other materials, to defray such taxes and expenses, such justices shall issue a warrant, authorizing the collector to sell so much of such timber, wood, poles, or other materials, as may be necessary to pay such taxes and expenses. Unpaid taxes - warrants, when issued.

22. Where the owner is unknown to the collector, affidavit of that fact shall supersede the necessity of the affidavit of mailing a notice and demand; and in such case the warrant shall issue as provided in the last preceding section. Unknown owners.

- CHAP. 58.** 23. If the justices on application of the collector shall be satisfied that no timber, wood, poles or other materials can be found on the land sufficient to satisfy the warrant, they shall give him a certificate to that effect, which shall be his authority for taking no further steps to collect the rate to which such certificate applies.
- Where no property, justices to certify. 24. It shall be the duty of the collector to levy any warrant issued by such two justices by selling so much of the timber, wood, poles or other materials on the land as will be sufficient to pay the amount of such rates and the expenses connected therewith; and in making such sale he shall sell only so much and such part thereof as shall be sufficient to satisfy such rates and the expenses connected therewith—first selling such part thereof as he shall consider most for the advantage of the owner of the land to have sold.
- Levy of warrants 25. A purchaser under such sale shall be entitled to a right of entry upon the lands to remove the timber, wood, poles or other materials purchased by him at any time within one year after the sale, and to any other incident that may be necessary to render his right available to him; but shall have no further right, privilege or easement whatever in respect thereof.
- Purchaser's right of entry. 26. The collector shall give public notice of the day of the sale, of the description of the property, and (when known) the name of the owner, and the amount of taxes rated on the property, which notice shall be given at least ten days previously to the sale, by handbills posted up in at least five public places near to the lands in question; and the sale shall be made at public auction.
- Sale, public notice of. 27. If the amount realized by such sale shall be greater than the amount due for the taxes and expenses and the costs of such sale (the same being regulated by the amount paid on constables' sales, under executions issued from justices), the surplus shall be paid over to the treasurer, who shall enter the same as surplus funds in the book to be kept by him as hereinafter mentioned.
- Surplus money, to whom paid. 28. In case the collector shall be unable under such warrant to collect the amount by sale as aforesaid, then it shall be his duty to return such warrant, with a statement of his doings thereon, to the treasurer, within ten days after the day named in his advertisement for the sale thereunder.
- Warrant to be returned, when, &c. 29. Every collector shall, at the expiration of the time limited by his roll, return to the treasurer so much of the assessment roll touching the lands of non-residents as relates to those lands in respect of which the taxes remain unpaid, or in respect of which surplus shall arise, in all
- Assessment roll, how returned.

cases where sales under warrant shall have taken place; and shall also return the certificate given to him as aforesaid. CHAP. 58.

30. The treasurer shall record, in a book to be kept by him for that purpose, the description of all such lands, and shall minute opposite thereto the taxes and costs chargeable thereon, and the proceedings had in respect thereof; and such taxes and costs shall be a privileged lien upon the lands, bearing interest at ten per cent. for the first year, increasing annually by two per cent. additional until payment. Records kept by treasurers.

31. It shall be the duty of the treasurer to lay every year before the council for each municipality the book containing such entries; and such council shall have the power, in case they see fit so to do, to award a warrant to the sheriff of the county for the sale of so much of such lands as may be necessary to pay and discharge the amount of the lien thereon with cost of sale; provided always, that no warrant shall issue for the sale of any lands until after the rates due thereon or some part thereof shall have been unpaid at least three years. Warrants, by whom awarded and when.

32. When the council shall have ordered a sale, the clerk of the municipality shall issue a warrant addressed to the sheriff of the county where the lands lie, ordering him to make sale of so much of the lands as may be necessary to pay the charges against the same. Sale, when ordered by Council.

33. The sheriff shall thereupon sell by public auction so much of the lands as shall be sufficient to discharge such taxes and expenses and the charges of sale, selling first in preference such part of the lands as he may consider to be the least to the injury of the owner, and in all other respects, as to notices and other preliminaries of sale, conducting the same agreeably to the forms prescribed on sales under judgments of the Supreme Court; and within one month after sale he shall return his warrant to the treasurer and pay over to him the proceeds of such sale, deducting such costs as he would have been entitled to under judgment sales. The sheriff's deed, which shall be in the form in the schedule E, or to that effect, shall be *prima facie* evidence of the title of the lands being conveyed to the grantee. Sheriff's sale, how much sold.

34. The treasurer shall note in the book to be kept by him any surplus moneys arising by collector's, constable's, or sheriff's sales opposite the record of the description of the lands; and any such surplus shall in the meantime be added to the general municipal fund, and be paid to the order of such person or persons as shall prove to the Surplus how disposed of.

CHAP. 58. satisfaction of the council his or their right to the same as owners of the lands in respect of which the sale occurred.

Poor rates on lands of non-residents paid over. 35. The treasurer, on receipt of the taxes on lands of non-residents, shall pay over as soon as reasonably may be to the overseers of the poor of any district so much of those moneys as belong to the poor rates of the district.

Collector to pay over to treasurer. 36. The collectors shall pay over the moneys received without delay to the treasurer, who, if necessary, may maintain an action therefor as for money had and received to the use of such treasurer; and such action, whatever may be the amount claimed, may be brought before any two justices of the peace for the county, subject to appeal as in ordinary cases; and every collector shall make a general return to a justice within the township or place, or if none reside there to any justice of the county, of every person who, after demand made either personally on the party rated, or by leaving at his residence a written or printed demand of such rate, or if he has removed from the district, by mailing a letter containing such demand directed to his then residence, shall not have paid his rate; and the collector shall make oath in writing before such justice, setting forth the name of every defaulter, the sum assessed, that demand has been made, and what portion of the rate is unpaid.

Return of defaulters. 37. Such justice shall thereupon forthwith issue a general or special warrant of distress against the several defaulters, or any one or more of them, in the form in the schedule, directed to a constable or to such collector, commanding him to levy from the goods of each person named in the warrant the sum due by such person, with collector's or constable's and justice's fees, and shall specify therein when the same shall be returnable; and the constable or collector shall return the same within the specified time under a penalty of twenty dollars, to be collected and added to the funds of the county over the amount collected thereunder, to the treasurer. The justices' fees for such warrant shall be seventy cents, and the collector's or constable's fee for each person in the warrant shall be twenty cents; but the collector or constable shall have no travelling fees or poundage, and the justice's fee shall be apportioned among the several persons, if more than one, in the warrant; and no suit shall be brought against such defaulters before any such justice. If the collector or constable shall die, leave the county, or neglect or refuse to execute the warrant, any constable of the county may execute the same. In issuing general warrants for the collection of poor and county rates payable at the same time and to the same collector, the defaulters for both rates shall be

General or special warrants may issue.

Fees.

included in one warrant; and the form of the warrant in CHAP. 58.  
 the schedule of chapter 35, "Of the Settlement and Support of the Poor," or that in schedule F of this Chapter, Form of general warrant.  
 so altered as to answer the purpose of collecting both rates, shall be used.

38. The collector or constable shall forthwith execute such warrant and pay over the amount collected thereunder to the treasurer; and if he is unable to find goods sufficient to satisfy the warrant in respect of any parties named in the warrant he shall make a return to that effect, and the justice shall thereupon issue a separate or Constable's or collector's duty on warrant.  
 general warrant as may be necessary, to include costs and fees thereon, directing the collector or constable to levy on the goods and chattels of such defaulter or defaulters, and for want thereof to take the body or bodies of one or more of the defaulters and commit to jail as under an ordinary execution, and parties so committed shall be entitled to all the privileges of debtors imprisoned under execution, and the justice shall be entitled to a fee of twenty cents for such warrant or execution. Separate warrant to take body.

39. Where the amount to be collected under any warrant of distress or commitment exceeds two hundred dollars, the same may be directed to and executed by the sheriff, who shall execute the same, and his fees thereon shall be the same as those of a constable. Warrant when executed by sheriff.

40. If the council shall neglect to make provision for the several purposes mentioned in section 2 of this Chapter, or any other necessary, requisite and lawful purpose within the scope and authority of the council, the Supreme Court shall amerce the municipality in such sum as shall appear upon affidavit of a ratepayer necessary for the purposes of the second section, which sum shall be assessed upon the inhabitants of the municipality, collected, paid to the treasurer, and accounted for as other rates. Council neglecting to make provision under section two, Supreme Court to amerce municipality.

41. Where the Supreme Court have power by any Act to amerce a municipality, district or township, an order of the court specifying the amount to be amerced and the purpose thereof, when served upon the clerk of the municipality, shall render it the duty of the clerk and of every other municipal officer connected with the assessment and collection of rates to proceed in respect to the assessment, levy and collection of the sum to be amerced, together with the costs of the rule, when ordered and taxed, in like manner as if the same had been levied by the municipality in the usual course. Proceedings in Supreme Court.

42. Any municipal officer neglecting or refusing to perform any duty devolving upon him under this Chapter in respect of such amercement may be proceeded against Neglect of duty.

**CHAP. 58.** and punished as for a contempt of court, and shall also be liable to any fine or penalty imposed upon such officer for neglect of duty.

Supreme Court may name person when municipal officer refuses to act.

43. The Supreme Court, in case of the neglect or refusal of any such clerk or other municipal officer to perform any duty devolving upon him under this Chapter, shall have power to name a person to discharge such duty in the place of the officer so neglecting or refusing; and the person so appointed shall have all the powers, rights and authorities, and be subject to all the liabilities, of the officer in whose room he is so appointed.

Special warrant, how obtained.

44. In any case in which a collector of rates shall deem it necessary to apply for a warrant against a defaulter, such collector shall make oath before a justice of the peace that he has demanded the rate from such defaulter, and that he deems it necessary in order to obtain payment thereof that such warrant should issue; and thereupon it shall be proper and competent for the justice to issue a special warrant of distraint to include one or more defaulters as circumstances may require, and to be executed in manner prescribed by this Chapter; and it shall not be necessary that all defaulters shall be included in one warrant of distraint.

Moneys paid to treasurer.

45. All moneys belonging to or due the county shall be paid to the treasurer thereof, who if necessary may maintain an action therefor as for money had and received to the use of such treasurer; and all moneys due from the county shall be paid by him on the order of the council.

Treasurer's account to be prepared annually and audited.

46. The treasurer shall once in every year, at such time as may be directed by the council, make up his account and send the same to the clerk of the municipality to be filed and audited; and the same shall be laid before the council on the first day of the next session to be audited; but the council may at any time if they see fit order the treasurer to make out and render his account up to any period named in such order.

Appeals, when and how prosecuted.

47. Any person aggrieved by the assessment or the levy may appeal to the next session of council held in the county, or to any special session to be held for hearing appeals, giving at least eight days' notice to the clerk of the municipality of such appeal, who is required to appear in support of the assessment or rate; but such application shall be founded on affidavit setting forth the grounds thereof; and the court of appeal without prejudice to the whole or any part of the assessment may either set aside or lower the rate on such person, or finally determine the appeal, as they shall see fit.

48. Any party aggrieved by the decision of the council CHAP. 58. may appeal therefrom to the next term of the County or Supreme Court for the county. The appellant shall within ten days after such decision file a bond with two sufficient sureties in the sum of one hundred dollars to Her Majesty the Queen to respond the judgment of the court of appeal and to pay such costs as may be adjudged against him in respect of such appeal. And the court of appeal may inquire into the matter *de novo*, and examine such witnesses and take all such proceedings as may be requisite for a full investigation of the case.

Party aggrieved by decision of council may appeal to Supreme or County Court.

Proceedings on appeal.

49. If any money has been paid by the appellant, and the council or court of appeal adjudge that the same or any part thereof be returned, the same shall by order of the council be repaid by the treasurer out of any money received from the general assessment of the municipality, but no appeal shall delay the collection or recovery of the sum assessed upon the appellant.

Repayment, when ordered.

Appeal not to delay collection.

50. Every person appointed by any council or by any amercement to be an overseer of work or distributor of money so raised shall at the next meeting of council, and within a reasonable time by the council to be appointed, produce his account, on oath if required, with vouchers that the money by him received has been expended according to law; and if upon account made he shall be found to have money on hand he shall forthwith pay the same to such person as the council shall appoint; and in default of such account or payment he shall by warrant of the council be committed to jail, there to remain in close confinement for three months, or until such account be made, and the balance be paid with costs, or sufficient security be given for the same.

Overseers of work to render accounts.

Proceedings in default.

51. The council out of the money assessed shall from time to time order a reasonable compensation to overseers, distributors of money, and constables employed under this Chapter.

Compensation to overseers, etc.

52. All forfeitures and penalties hereby imposed as to which it is not otherwise herein provided shall be sued for, collected and recovered by summary conviction before a justice or justices of the peace or stipendiary magistrate; provided that the amounts of all penalties when recovered shall be paid to the treasurer of the municipality for the general purposes thereof.

Forfeitures and penalties, how collected, &c.

53. No action shall be commenced for anything done in pursuance of this Chapter after six months from the date of the act complained of, and every such action shall be laid where the cause of action arose.

Limitation of actions, and venue.



- CHAP. 58.** 54. No certiorari to remove rates or orders, or other proceedings of the council touching rates, shall be granted but upon motion in the first week of the next term in the county after the time of appeal has expired, and upon it being made to appear by affidavit that the merits of the question on such appeal or orders will by such removal come properly in judgment; and no certiorari shall be allowed till a bond, with one surety to be approved by the treasurer, be given to him in forty dollars to prosecute the same with effect, and pay the costs if the rates or orders be confirmed; nor shall any rates or orders be quashed for matter of form only, nor any general rate for any illegality in the rates of individuals, except as to such individuals.
- Certiorari, when allowed and how obtained.
55. No action shall be brought against a collector or receiver of money on a rate subsequently quashed on a certiorari or otherwise; but the person who has overpaid shall have the amount refunded by the treasurer on the order of the council.
- When rates quashed, over-payment refunded.
56. The City of Halifax and all incorporated towns shall, so far as regards any rates which under the authority of law the corporation have power to enforce, be exempted from the operation of all the sections of this Chapter in reference thereto.
- Halifax, &c., how far exempt.
57. If the whole assessment to be contributed in any one year by a district be not collected and paid over to the treasurer, the amount remaining unpaid shall be added to the next year's assessment of such district, and collected from such district with and in addition to such next year's assessment.
- Proceedings when whole amount not paid.
58. The clerk of the municipality shall, when any fine or penalty is incurred for the breach of any of the provisions of this Chapter, cause proceedings to be instituted to enforce the payment thereof; and if he shall neglect to do so within ten days after he shall have been required by the council, he shall pay a fine of eighty dollars, to be recovered in the Supreme Court or County Court in the name of the Queen; and in case the clerk shall neglect to fulfil any of the other duties imposed upon him by the same sections he shall pay a penalty of forty dollars, to be recovered as aforesaid.
- Clerk to enforce penalties.
59. It shall be lawful for any council, instead of appointing assessors for separate townships and places, to appoint in the same manner as other municipality officers are appointed, one or two assessors for each polling district within the county, who shall be called local assessors; and also to appoint for the whole municipality general assessors, not to exceed three in number; and thereafter the assessment roll for each polling district in any such
- Penalty for neglect.
- Appointment of local and general assessors.

county shall be made up by the general and local assessors CHAP. 58. of the district, acting as a board of assessment for such district.

60. In such case the clerk of the municipality shall Meeting, notice of. duly notify the local assessors of the days and places that shall be appointed by the general assessors for holding a meeting of the assessors in each polling district; and it shall be the duty of the general assessors and local assessors to meet at the time and place named in such notification for the purpose of making up the assessment roll.

61. Every clerk of the municipality in the Province shall once in every year, not later than thirty days after Return to Provincial Secretary's office. the adjournment of the council, make a return to the Provincial Secretary's office from the assessment rolls, of the total valuation of taxable property in the county or district over which his duties extend.

62. The estate of a deceased person in the hands of his Estate of deceased person liable for rates. executors or administrators shall be liable for county rates assessed on such estate in his life-time and due at the time of his death, and such estate may be levied on and sold for the payment of such county rates under a warrant to be issued for such purpose by a justice of the peace for the county in which the estate is, which warrant shall be directed to and executed by a constable of such county; and the proceedings on such levy and sale shall be the same as in case of ordinary defaulters; and, where there is no administrator of such deceased person, or where his will has not been proved in the Court of Probate, the estate of such deceased person may be levied on and sold, wherever found in like manner. The demand for such rates shall be made on the executor or administrator, if any, or if there be no lawful executor or administrator, at the last place of abode of the deceased.

63. The assessment of any person who shall subse- Assessment, charge on estate. quently die or become insolvent, or assign his property liable to the assessment, shall be a charge upon his estate to be paid by his executors, administrators or assigns, and in default of payment they or either of them may be held personally liable under the warrant unless they or either of them shall make oath before a justice of the peace, stating that there is not in their possession or under their control belonging to such estate sufficient money or other property to satisfy such assessment.

64. It shall be the duty of assessors to assess all the Duty of assessors ratable property belonging to any association, company, or firm, in the name of the association, company, or firm, and

CHAP. 58. not in the name of the agent or of any single member ; and in assessing such property it shall be the duty of the assessors to have regard to the boundaries of school sections, and in every case to return with their valuation of such property the name or designation of the school section in which it lies ; and where the same association, company or firm holds property in two or more school sections, to specify distinctly their valuation of the portion in each, also of the portion, if any, not included in any school section.

**Assessors neglecting.** 65. If at any time the assessors neglect to carry out the provisions of the next preceding section, the clerk of the municipality shall, on the request of any school trustee, refer the roll back to the assessors for amendment or correction, if it shall appear to such clerk of the municipality that there is likely to be any defeat of the law relating to public schools owing to such neglect on the part of the assessors.

**Exemptions.** 66. Ships or vessels on the stocks in course of construction, and the timber and materials in any shipyard used or to be used in their construction, shall be exempt from county rates to the extent of half their value.

**Assessors, collectors and town officers shall be sworn into office before J. P.** 67. Assessors, collectors, and county, town and district officers under this Chapter shall be sworn into office by any justice of the peace for the county or district where such officers reside, who shall without fee make a record thereof, and shall within forty days from the time of such swearing into office forward a certified list of such officers so sworn as aforesaid to the clerk of the municipality of such county or district, who shall file the same.

**J. P. refusing to swear any officer to forfeit twenty dollars.** 68. If any justice of the peace shall refuse to swear any of the above officers into office when thereunto required, or shall neglect to certify or forward the said list to the clerk of the municipality as in the next preceding section directed, he shall forfeit twenty dollars.

**Property to be assessed in district in which it is situate.** 69. Persons residing in one municipal district of a county or in an incorporated town and owning property in another municipal district of a county or in an incorporated town, may be assessed for the same in the district or town where the property is situate, and notice of such assessment transmitted by post shall be deemed a sufficient notice.

**Correction of error in name on assessment roll.** 70. In case it shall appear that an assessment has been made in any district upon any person not legally liable to pay the same, it shall be lawful for the assessors, warden, or clerk of the municipality to substitute the name of the proper person in place thereof, who shall be liable to pay the same as if his own name had been originally entered on the assessment roll.

71. The warrant of distress for non-payment of county rates may be levied and enforced on any property owned by the delinquent in any district in the county. CHAP. 58.  
Warrant of distress, on what levied.

72. In every case where, between the making of the assessment roll for any year and the levying of any assessment according to such roll, any person rated therein in respect of real or personal property shall remove from the county or municipality having conveyed, leased or otherwise disposed of such property, such assessment shall be a charge on the property, and may be collected from the owner, assignee or person in possession of the same at the time of levying said assessment, whose name shall be inserted in the affidavit and warrant for collecting in the same manner as if such person had been originally assessed in respect of such property, and his name were on the assessment roll, and in case of property taken or sold under execution or other legal process, or sold under an order for the sale of lands under foreclosure of mortgage, or other equitable process, the same shall be first liable for any assessment which may be due and payable thereon or made in respect thereof, and payment thereof enforced, and the sheriff or other officer shall be bound first to pay such assessment out of the proceeds of such sale. Sheriff to pay rates on property sold under execution or foreclosure of mortgage.

73. The assessment of all coal mining and other joint stock companies shall be made as follows:—Before the assessment for the whole municipality shall be made up by the assessors they shall notify in writing the resident agents of the several coal mining and other joint stock companies in such municipality of the value at which they estimate the real and personal property of such companies, and require such agents, if they object to such valuation, to severally furnish to such assessors, within fourteen days from the dates of such notices, written statements, under the oaths of such agents, of the actual value of such real and personal estate of such companies, not including any undisturbed minerals. After service of the notices upon such agents, fourteen days shall be allowed them to furnish such assessors with such written statements under oath of the actual value of the real and personal estate of such companies. The term “resident agent” in this section and the following sections shall be held to mean the principal agent of the company resident in this Province or the person (if any) duly registered as agent. Before assessment, resident agents of coal and other companies notified of value at which property is estimated. If they object, to furnish assessors in fourteen days with statements under oath of actual value.

74. Whenever the resident or registered agent of any such coal mining or other joint stock company in the county to be assessed shall deliver such sworn written statement to the assessors within such fourteen days, the Such sworn statement adopted by assessors.

CHAP. 58. assessors shall adopt the valuation sworn to; and such valuation shall be binding, subject only to an appeal by the clerk of the municipality on behalf of the municipality to the regular meeting of the council, or to any special session called for the purpose of hearing appeals, and therefrom if necessary to the Supreme Court.

If no such statement, original valuation adopted.

75. Should such sworn written statements not be furnished within such fourteen days by such agents, the assessors shall proceed upon their own original valuation; and such valuation shall then be binding, subject only to appeal to the council.

SCHEDULES.

A.

All personal chattels of every kind and description at their actual cash value, except as qualified beneath.

The average stock of goods on hand of every merchant, trader or dealer, manufacturer, tradesman or mechanic; such average stock to be considered the mean between the highest and the lowest amount of goods on hand at any time during the year, and to be estimated at cost price.

One half the value of ships afloat, whether in the Province or elsewhere.

B.

Assessment roll for the Township (or District) of \_\_\_\_\_.

Name of taxable party.	Value of Real Estate within the Municipality.	Value of personal Estate within the Municipality.	Whole taxable property	District in which property is.	Amount assessed in different Townships.
A. B.	\$2400	\$ 800	\$3200	Township of A.	\$1000
C. D.	400	1500	1900	B.	1400
E. F.		800	800	C.	800
G. H.		200	200		
Non-residents' land within the Township [or District], per list.					

Assessment roll of non-residents' lands within the Township (or District) of \_\_\_\_\_, CHAP. 58.

Name of taxable party if known.	Number of acres or thereabouts.	Description of lot sufficient to identify it.	Value of land.
J. R.	500	A lot of land situate to the West of _____ river, bounding thereon on the East (or such other description as may identify it.)	\$ 800
Unknown.	300	A lot of land originally granted to A. B., (or such other description as may identify it.)	5200

C.

Collector's Roll for Municipal Rates for the Township (or District) of \_\_\_\_\_.

Name of taxable party.	Poll tax.	Taxable property.	Rate payable thereon.	Total tax.
A. B.	25 cents.	\$3200 00	\$1 60	\$1 85
C. D.	25 "	1600 00	80	1 05
E. F.	25 "	800 00	40	65
G. H.		200 00	10	10
Non residents' land.		6000 00	3 00	3 00

Collector's Roll for Municipal Rates for the Township (or District) of \_\_\_\_\_.

Name of taxable party, if known.	No. of acres.	Description of lot sufficient to identify it.	Value of land.	Total levy.
J. R.	500	(Copy the description from the certified roll, or give other sufficient description of it.)	800 00	40 cents.
Unknown.	301	(Copy as above.)	5200 00	\$2 60

CHAP. 58. You are hereby required to collect three dollars, the tax as specified in the within roll, and to pay over the same to the municipality treasurer within \_\_\_\_\_ days herefrom.

Dated at \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

A. B., Clerk.

To C. D., Collector of Rates for above District.

E.

To all to whom these presents may come :

I, A. B., Sheriff of the County of \_\_\_\_\_, send greeting : Whereas, C. D., of \_\_\_\_\_, in the County of \_\_\_\_\_, on the day of the date hereof, bought for the sum of \_\_\_\_\_ the lands hereinafter described, at a public auction held at \_\_\_\_\_, under the provisions of Chapter Fifty-Eight of the Revised Statutes, "Of Municipal Assessments"; And whereas, upon such sale the said C. D. paid the purchase money :

Now know ye, that I, the said sheriff, in consideration of the sum of \_\_\_\_\_, so paid to me as aforesaid, have granted and conveyed, and by these presents do grant and convey to the said C. D., his heirs and assigns, all that (*here describe the land.*) In witness whereof, I have hereto set my hand and seal at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

F.

*Form of general warrant of distress.*

Municipality of \_\_\_\_\_ } To A. B., one of the constables (*or*  
C. D., one of the collectors) for  
the Township of \_\_\_\_\_.

Whereas by a rate and assessment made in conformity with law, the persons named in the schedule hereunto annexed have been assessed for municipal rates for the year ending the \_\_\_\_\_ day of \_\_\_\_\_; and whereas it appears to me, one of the Justices of the Peace for such County upon the oath of C. D., one of the collectors for such township, (*or of you the said C. D. a collector as aforesaid*) that the several sums for which they have been assessed have been demanded from such persons respectively, and that the sums set opposite their names in such schedule remain unpaid: these are therefore to require you forthwith to make distress of the goods and chattels of the persons

mentioned in the schedule ; and if within the space of five CHAP. 58.  
 days next after such distress by you taken the sums in the  
 schedule set opposite their respective names, being the  
 sums rated on them respectively, together with their  
 proportion of justice's and constable's (or collector's) fees  
 and the necessary charges of taking and keeping the  
 distress be not paid by each of them respectively, that then  
 you do sell the goods and chattels of such of them as shall  
 not have paid such sums with fees as above mentioned, and  
 out of the moneys arising from such sale you do forthwith  
 pay over the sums so due by them respectively to the  
 treasurer of such municipality, together with the justice's  
 and constable's fees, if any ; and that you do render to the  
 owners of the goods respectively upon demand the surplus  
 remaining from such sale, the necessary charges of taking,  
 keeping and selling the distress, being first deducted ; and  
 if no such distress can be made, that then you certify the  
 same to me, and of your doings under this warrant make  
 due return to me within — days after the date thereof

Given under my hand and seal the — day of —  
 A.D. 18—.

(Signed) ———, J.P. (Seal.)

—  
 G.

County of — SS. } To any of the constables of said  
 County of ———.

Whereas by a rate and assessment made in conformity  
 with law — — was assessed for a period ending the  
 — day of — in the sum of — for

A general warrant of distress was issued and a return  
 made thereon that no goods or chattels could be found  
 belonging to the said — — whereon to levy.

These are therefore to require you to levy —  
 from off the goods and chattels of the said — — by  
 sale of said goods and chattels after duly advertising the  
 same, and for want thereof you are hereby required to take  
 the body of the said — — and him commit to Her  
 Majesty's jail in —, the keeper whereof is required to  
 take the said — — into his custody and him safely  
 keep, until he pay the sum above mentioned with your  
 fees and jailer's fees—or that he be discharged by due  
 course of law. Whereof fail not and make due return of  
 this writ with your doings thereon to me within — days.

Witness my hand and seal — day of — 18—.

J.P. (Seal.)



CHAP. 59.

TITLE XIV.

OF CERTAIN MUNICIPAL AND LOCAL REGULATIONS.

CHAPTER 59.

OF SUPERVISORS OF PUBLIC GROUNDS.

Appointment of supervisors.

1. The municipal council of each municipality shall, on application of twenty freeholders of any township or other territorial division of a municipality, appoint three persons resident in any such township or territorial division to be supervisors of public grounds, and the council may remove them or any of them and vacancies shall be supplied by the council, and the clerk of the municipality shall keep a record of such appointments, removals and vacancies and the dates thereof; and such supervisors shall be a body corporate by the name of "The supervisors of public grounds for the \_\_\_\_\_ of \_\_\_\_\_."

Title of public grounds, &c., vested in supervisors.

2. The legal title of and in all public parade grounds and public landings within the township or other division for which such supervisors are appointed, and of all commons and other lands not belonging to the municipality at large, but which may be acquired or had for the general purposes and uses of the inhabitants of such township, and of and in all buildings thereon being and appurtenances thereto belonging, shall on their appointment vest in the supervisors for the original purposes for which they were intended.

Leases, how made; accounts filed; rents, how applied.

3. The supervisors may, by direction of the municipal council, lease any such lands not required for public uses for any period not exceeding seven years; and they shall annually render to the council an account of moneys by them received for rents and of expenses connected with the letting, to be audited and then filed in the office of the clerk of the municipality; and the balance of such rents after deduction of the expenses shall be by the supervisors paid to the overseers of the poor for the township, or where there shall be more than one poor district in the township shall be equally divided among the different districts and paid to the overseers thereof respectively.

4. Nothing in the preceding sections contained shall CHAP. 59. extend to any place of divine worship, burial ground, college, academy, school, or any land thereto belonging, or any land belonging to any religious congregation or society, or shall deprive any person of any right lawfully acquired, or affect any lands or buildings now vested in trustees.

5. Whenever the supervisors shall deem a road encroached upon or encumbered, and in all cases where a doubt or dispute shall exist as to the true line of a road or as to which side is encroached upon, the supervisors after ten days' notice in writing to the parties in possession of the land on both sides of the road where the line is in dispute, or the parties who may have caused the encroachment or encumbrance, of the time and place at which they will investigate the matter, shall repair to the place where the encroachment or encumbrance shall be alleged to exist or the line be in dispute, and there inquire into the facts, and if necessary may then or at a future day have a survey made of the road, and examine witnesses on oath, to be administered by a supervisor, touching the matter; and shall after completing the investigation determine and mark out the true line of the road and direct the same to be opened to the full width of sixty-six feet, or to any less width to which it may have been confined by its dedication, and shall by order in writing direct and cause all encroachments or encumbrances to be removed to such distance as they shall determine on; but they shall not cause to be removed any building erected upon the road; but where a building shall be found to encroach thereon they shall report the same to the next meeting of the council, and the council shall make such order in relation thereto as may be deemed proper.

6. If any person shall not obey the order of the supervisor or council delivered to him in writing within thirty days after receiving the same, he shall on summary conviction before a justice of the peace forfeit four dollars; and if the encroachment or encumbrance be suffered to remain for a further space of twenty days after the imposition of the fine the continuance shall be held a new offence, and shall subject the party to a further fine of four dollars; and so in like manner shall every further continuance of the encroachment for twenty days be held a new offence, and the further fine of four dollars be imposed therefor.

7. The supervisors may apportion and order the payment of the expenses incident to the proceedings hereinbefore mentioned among and by such persons as shall appear advisable; and the same shall be recoverable

Lands and property exempted from operation of Chapter.

Encroachments on roads, how dealt with: proceedings in cases of dispute.

Fine for disobeying supervisor's or council's order

Expenses, how borne and recovered.

CHAP. 59. by the parties entitled thereto as if it were a private debt of the like amount.

Order of supervisors, or council, now proved.

8. In any suit under either of the two preceding sections the production of a copy of the order of the supervisors under their hands, or of the order of the council under the hand of the clerk of the municipality, proof of the hand writing being in either case given, shall be good evidence of the order, and shall suffice to establish the claim of the plaintiff.

Record to be signed and filed.

9. The supervisors shall make a record of their investigations and order, setting out therein the lines of road by them established, which record shall be signed by them and be returned to the clerk of the municipality to be filed in his office.

Appeal from order.

10. Any person dissatisfied with the order of the supervisors or of the council may appeal therefrom to the next term or sitting of the Supreme Court in the county, where the matters in dispute shall be tried and determined by the verdict of a jury, if a jury shall be ordered by the court; and pending the appeal no further proceedings shall be had under the order.

Costs of appeal, how paid if order confirmed.

11. If judgment on appeal shall confirm the order then the costs of appeal shall be paid by the appellant, and having been taxed in the usual manner shall be recovered by execution.

When order reversed, costs how paid.

12. If the order shall be reversed on appeal the costs consequent thereon as well as the expenses attending the making of the order shall be paid in the first instance by the supervisors, but shall form a municipal charge, and be refunded to them, together with their own reasonable charges.

Supervisors to give notice of intention to widen road.

13. Where a road shall have been opened and used as a public highway, and the same although not encroached upon has been originally laid off too narrow or shall have been made public by use only, and the supervisors shall deem it proper to widen the same, they shall notify the parties in possession of the lands on both sides of their intention to widen the road, and that application for that purpose will be made to the next meeting of the council.

Proceedings to be had before council.

14. The supervisors shall at the next meeting of council submit to the council their application for widening the road, stating the then breadth thereof and the width to which they propose to open the same; and if they shall have made any agreement with the proprietors of the land as to compensation for land and fencing shall at the same time submit it; and if the council are satisfied of the propriety of widening the road, and shall approve of the agreement so made, they shall make an order for widening

the road, specifying the breadth to which it shall be extended, and confirm the agreement made, which order shall be final; and the supervisors shall proceed to widen the road accordingly.

15. In case no agreement shall have been made or the council shall not approve of the agreement, but shall be satisfied of the propriety of widening the road, they shall appoint three disinterested freeholders, one to be nominated by the supervisors, one to be nominated by the possessors of the lands, or on their omission by the council, and the third to be nominated by the council; and shall issue their precept to the three freeholders, directing them to lay off and mark out the road to the width directed, in the way most conducive to the public good and least prejudicial to the proprietors of the lands. And all further proceedings in reference to the widening of the road, whether upon appeal or otherwise, shall be had in the manner prescribed by the Chapter of this Series in regard to opening new roads or altering old ones, except that the propriety of widening the road shall not be inquired into; and the damages appraised shall form a municipal charge, but no fencing shall be paid for except as directed under the last mentioned chapter.

CHAP. 59.  
Council may appoint three freeholders to lay off road; subsequent proceedings.

16. No road shall be opened under the last three sections to a greater extent than sixty-six feet.

Width of road.

17. Where any road in a township has been open for the use of the public for twenty years and any doubt or dispute has arisen as to the true line or width of such road, and the supervisors of public grounds in such township shall deem it proper to determine such true line or width, they shall be at liberty to proceed as in the case of widening roads under this Chapter and subject to the like terms of compensation.

Disputes as to line or width of road, how settled

18. Sections thirteen, fourteen, fifteen and sixteen of this Chapter shall not apply to the City of Halifax.

Certain sections not to apply to Halifax.

19. The word "township" in this Chapter shall be held to include any other division of the municipality for which supervisors are appointed under the authority of this Chapter.

Meaning of word "township."

20. The provisions of this Chapter shall extend to roads upon which grants of moneys may have been made by the Legislature, to roads which have been open for the use of the public for twenty years, and to roads upon which statute labor may have been performed, except private or pent roads whereon the statute labor may have been performed by direction of the sessions or municipal council, but shall in no case apply to roads which have been abandoned.

Roads affected by this Chapter.

CHAP. 60.

## CHAPTER 60.

## OF SUBSCRIPTIONS TO PUBLIC WORKS.

Subscribers to  
public works  
liable.

1. Whenever any subscription shall be opened and made in aid of the erection of any road, bridge, place of worship, school house, or for any other undertaking of public utility, or which may be designated in the subscription list as or appears to be a public undertaking, and such undertaking shall be commenced, every person who may have engaged in written subscription to contribute money, labor or other aid towards the undertaking shall be held legally liable and bound to perform his engagements, notwithstanding any apparent want of consideration in the agreement for the same.

Commissioner,  
&c., may enforce  
payment of sub-  
scription after  
notice, etc.

2. In case of public grants made in aid of such undertaking the commissioner or other person appointed to expend such grant, or where no public grant shall be made, then the person to whom the performance or superintendence of such undertaking may have been entrusted, or the person who may himself have engaged in and be then carrying on such undertaking, may require all persons who may have so subscribed to perform their engagements; and in case any subscriber shall after a written notice of at least one month refuse or neglect so to do he may be sued by such commissioner or other person hereinbefore mentioned, or the person to whom such subscription may be payable, as if such subscription were a private debt of the like amount; but nothing in this Chapter shall be construed to bind or make liable the estate of the executors or administrators of any subscriber unless they be specially named in the instrument subscribed by him.

Proviso.

Moneys recover-  
ed, how applied.

3. All moneys or other aid so subscribed and recovered shall be applied and expended for the purpose for which the same shall have been so subscribed, and for no other purpose whatever.

## CHAPTER 61.

## OF INDUSTRIAL AND EXHIBITION BUILDINGS.

1. The municipal council of each municipality in the Province is hereby authorized and empowered to add whenever it shall see fit to the yearly assessments for municipal purposes a sum not exceeding four thousand dollars, to be expended under and by the authority of said council in their respective municipalities for the purchase of grounds and the erection of industrial and agricultural exhibition buildings thereon, or on lands suitable therefor owned by said municipalities or purchased for and deeded to trustees appointed by said several councils for the purposes of this Chapter; and the said councils in said several municipalities are hereby empowered and authorized to make all necessary regulations as they may see fit and deem proper for obtaining and expending said sum of money, and the same when made shall be recorded by the clerks of said municipalities in the record books then in use in said councils, and shall have all the force of law.

Municipal council empowered to assess municipality for costs of grounds and buildings and to regulate expenditure thereof.

2. The council of any and every municipality in the Province that may see fit to act under this Chapter, in addition to the power conferred upon them under the foregoing section, shall be at liberty and are hereby authorized and empowered to borrow said money for the municipalities in which they have jurisdictions, to be paid to the lenders with interest in yearly instalments during a term of five or more years as such councils shall determine, and if they see fit shall also have power to issue municipal debentures to respond such annual payments in such manner and form as said councils shall order and determine, and thereafter the amounts required yearly or half-yearly to meet said instalments or debentures or the interest agreed to be paid thereon shall be added to the amount ordered by the council to be assessed on said municipalities, and be assessed thereon for the purposes of this Chapter.

Municipal council empowered to borrow such money.

3. The council of any municipality having county or township lands within the municipality controlled by the council, not used or required for county purposes, if they see fit either to raise in the first instance in whole or in part, or afterwards supplement the county or district grant for exhibition purposes contemplated by this Chapter, are also hereby empowered and authorized to sell at public auction so much of the public lands aforesaid as such council shall deem necessary to make a fund towards realizing the amount necessary for said exhibition purposes aforesaid, and to give all necessary deeds in the name of

Council may sell certain lands to raise money for exhibition purposes.

CHAP. 62. the warden of the municipality selling such lands, whose execution thereof is hereby made legal and valid for the transference of said public lands to the purchasers thereof.

Form of debentures.

4. Any municipality borrowing money for exhibition buildings that sees fit to issue debentures therefor, as provided under section 2, may follow the form in schedule A, or any other the council of the municipality may see fit to adopt.

Application of Chapter.

5. The County of Pictou shall be exempted from the operation of this Chapter, and the County of Colchester shall be exempted from the operation of sections 1, 2, and 4 of this Chapter.

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### SCHEDULE.

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#### A.

##### LOAN FOR EXHIBITION BUILDINGS.

The municipality of \_\_\_\_\_ will pay at the office of the municipal treasurer at \_\_\_\_\_ in the county of \_\_\_\_\_ to the holder hereof the sum of \_\_\_\_\_ dollars in \_\_\_\_\_ years from this date with interest, payable half-yearly at the rate of \_\_\_\_\_ dollars per centum per annum.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18 .

A. B., Warden.

C. D., Municipal Treasurer.

Countersigned by Clerk of Municipality.

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## CHAPTER 62.

### OF PUBLIC MARKETS.

Existing public markets confirmed; council may establish others.

1. Public markets where now by law established are confirmed, and the council of any municipality may establish new public markets, and may procure and fit up a market house.

Council to appoint officers, make by-laws, and generally control markets.

2. The council may direct the days of the week and hours on which public markets shall be held, and may appoint keepers of the market who shall also act as clerks thereof, and shall be sworn into office and have the powers of constables so far as regards keeping order in the market, and shall be removable by the council. The council shall also establish the pay of such keepers and clerks, and fix

the rates of stalls or standings in the markets, and make by-laws for the regulation of markets, and impose penalties for breaches thereof, not exceeding two dollars for every offence. The keepers and clerks shall bring actions for such penalties in their own names, and shall be competent witnesses to prove the offence. CHAP. 63.

3. The rent of the stalls and standings in the markets, together with the whole amount of the penalties recovered under the preceding section, shall be applied under the direction of the council to the repairs of the market house. Rents and penalties, how applied.

4. The keepers and clerks shall annually render their accounts in writing to the council to be audited; and when approved they shall be filed by the clerk of the municipality. Accounts rendered annually.

## CHAPTER 63.

### OF FIRES AND FIREWARDS.

1. The municipal council shall annually appoint such numbers of the inhabitants of any town as may be deemed necessary to be firewards, who shall be sworn to the faithful discharge of their duties, and shall have suitable staffs assigned them as badges of office. Firewards, how appointed.

2. The extent of any towns for the purposes of this Chapter shall be confined to the limits within which the commissioners of streets have jurisdiction, but may be altered by the council; and the council may also divide the towns into different wards, and may appoint such limits where there are no commissioners of streets. Limits of towns and places defined.

3. Upon the breaking out of a fire the firewards, taking their badges with them, shall forthwith repair to the spot and use their utmost endeavors to extinguish and prevent the spreading of the fire, and to preserve and secure the property of the inhabitants, and may command the assistance of the inhabitants therein, and in removing property out of any building actually on fire or in danger thereof, and to appoint guards to secure and take care of the same, and may command assistance for the pulling down of buildings or for other services relating thereto to prevent the further spreading of the fire, and to suppress tumults and disorders; and due obedience shall be yielded to them for those services and generally at such fires; and in case of any disobedience of their orders information thereof shall within ten days next thereafter be given to a justice of the peace, and the offender shall on summary Firewards, their duties and powers at fires. Penalty for disobedience of their orders.



CHAP. 63. conviction thereof before a justice of the peace be liable to a penalty not exceeding eight dollars.

Fine for breaking open buildings without proper authority

4. No person shall at a fire break open any building or attempt to pull the same down, or order others so to do, unless orders therefor shall have been first given by the owner of the building, or as previously provided; and any person violating this provision shall on summary conviction thereof before a justice of the peace for every offence forfeit a sum not exceeding twenty dollars.

Duty of firewards as regards fire implements.

5. The firewards shall from time to time report to the council what number of ladders, hooks, buckets, bags, chains, ropes, axes and saws are required for service at fires, and the probable expense thereof and of keeping the same in repair; and the council shall order such of them to be provided as they may deem necessary; but every fireward shall be at all times provided with two ladders with hooks, one of which ladders shall be at least twenty-four feet in length, and the other at least sixteen feet in length, one fire hook, two axes, one saw, twelve leather buckets, and twelve large bags; which shall be by the firewards deposited in the most convenient places in each district, where on the alarm of fire the inhabitants of the district shall assemble and proceed under the direction of the firewards, with such of the implements as may be deemed necessary, to the place of danger.

Districts and implements to be numbered; provision for safety of implements.

6. The district of which each fireward shall have charge shall be numbered, and the implements in the last section mentioned shall be marked with the number of the district to which they belong; and within twenty-four hours after the extinguishing of any fire the different implements shall be delivered at their place of deposit; and if thereafter any of such implements shall be found in the possession of any person he shall forfeit a sum not exceeding eight dollars; and any person who shall use such implements except at a fire or on an alarm thereof shall upon summary conviction thereof before a justice of the peace forfeit a like sum.

Firemen, how appointed; their duties.

7. The council may appoint such number of firemen for each town as they may deem necessary, who shall under the firewards have the charge of the fire implements hereinbefore mentioned, and shall be obliged to keep them in good order and fit for service; and upon an alarm of fire they shall at once repair to the place of deposit of such implements and bring the same to the place where the fire shall have been discovered; and shall then diligently use the same under the direction of the firewards in such way as may be deemed most useful for extinguishing the fire.

8. One of such firemen to be appointed by the fire-wards shall have the power of a fireward in commanding assistance in taking the fire implements to or from any fire, and a like penalty shall attach for disobedience of his orders as of those of a fireward. CHAP. 63.  
Fireman appointed by firewards to have power of fireward.

9. The council may appoint as many fire constables as they may deem necessary, not exceeding six for each district, who shall be sworn into office, and shall at the time of fires with suitable staves to be provided them attend upon the firewards and act under their directions in subduing the fire, keeping order and preventing thefts; and if any constable so appointed shall neglect to be sworn into office within a reasonable time after being notified of his appointment, or having been sworn in shall neglect his duty, he shall on summary conviction thereof before a justice of the peace forfeit a sum not exceeding eight dollars. Fire constables, how appointed; their duties.  
Penalty for neglect.

10. The council for any municipality may hereafter assess upon a district to be by them defined such sum of money as they shall think necessary to be applied in procuring a fire engine with hose, fire buckets and other necessary appurtenances for such district, and also such sums as may be required from time to time for keeping the same in repair; and such moneys shall be assessed, levied and collected. Such moneys shall be assessed upon houses and buildings and every description of insurable personal property within such district, by assessors to be appointed by such council at such times and in such proportions as such council shall direct. Council may assess for fire engines.  
Property liable to assessment.

11. Such assessors shall appoint one or more collectors who shall collect such moneys: and such moneys shall be collected and payment thereof enforced in the same manner as municipal rates are collected and their payment enforced. Collectors; payment, how enforced.

12. Such collectors shall pay over the moneys by them collected to the municipal treasurer; and the municipal treasurer may maintain an action for money had and received against any of such collectors who shall not pay over the moneys by him collected. To be paid to municipal treasurer.  
Action against collector.

13. Any collector or assessor who shall neglect to perform the duties of his office shall forfeit a sum not exceeding forty dollars, to be recovered in the name of any person who will sue therefor in the same manner and with the like costs as if it were a private debt due such person. Forfeiture for neglect of duty, recovery of.

14. The council may from time to time appoint such number of enginemen as may be deemed necessary, who shall take charge of the fire engines and shall keep the Enginemen, how appointed; their duties.

CHAP. 63. same in good order and fit for service, and upon an alarm of fire they shall repair with their engines to the place where the fire shall have been discovered, and work the same under the direction of the firewards.

Engineman appointed by firewards to have power of fireward. 15. One of the enginemen to be appointed by the firewards shall have the power of a fireward to command any necessary assistance in taking the engines to and from fires; and any person refusing to obey his orders therein shall be liable to the same fine as hereinbefore imposed for disobeying a fireward.

Firemen and enginemen exempted from certain public duties. 16. Firemen and enginemen shall be exempted from the performance of statute labor, except in respect of assessed property exceeding one thousand dollars, and from serving on juries and in the office of constable; and these exemptions shall extend to persons who shall have actually served as firemen or enginemen for a period of sixteen years, and shall have obtained a certificate of such service from the captain or lieutenant of the company, countersigned by the secretary; provided however that the term of service so far as concerns the town of Yarmouth shall be twelve years only; and in said town of Yarmouth such exemptions and term of service shall extend and apply to firemen and enginemen now on service, and to those appointed after the nineteenth day of April, A. D. 1884, and in the computation of such time the past service of firemen and enginemen now in service in said town of Yarmouth shall be reckoned and allowed.

Vacancies, how supplied. 17. Upon any vacancy among the firemen or enginemen the same shall be at once reported by the captain to the council, that the vacancy may be supplied.

Chimney sweepers, how appointed. 18. The firewards may nominate and license chimney sweepers, and if any person shall act in that capacity without being so licensed he may on a summary conviction thereof before a justice of the peace be imprisoned for a period not exceeding one month.

Chimney sweepers to give bonds. 19. Licensed chimney sweepers shall enter into bonds with two sureties to be approved by the firewards, for performing their duties during the term for which they may be appointed and for conforming to the regulations of the firewards in reference to the sweeping of chimneys; and in case of neglect or refusal to perform their duties or to comply with such regulations they shall on summary conviction thereof before a justice of the peace forfeit for every offence not less than one nor more than four dollars; and if the penalty shall not be paid within ten days after conviction, and no personal property whereon to levy can

Penalty in case of neglect of duty.

be found, the offender may be imprisoned for a period not exceeding ten days, or the bond may be put in suit for the payment of the penalty and costs. CHAP. 63.

20. The firewards may make regulations respecting the times and mode of sweeping chimneys; and if a fire shall happen in any building or chimney so as to create alarm or to endanger the neighboring buildings, and the occupants of the building where the fire occurs cannot make it appear that their chimneys have been swept according to such regulations by a licensed sweeper, they shall on summary conviction thereof before a justice of the peace forfeit two dollars, to be recovered in the name of any fireward; and any fireward who shall be aware of the offence and shall not prosecute for the penalty within five days thereafter shall on summary conviction thereof before a justice of the peace forfeit twenty dollars.

Fines for neglect of regulations respecting the sweeping of chimneys.

21. Any two firewards may demand admittance into any building wherein they have reason to believe there is any dangerous chimney, stove, stovepipe or funnel; and if in their opinion the same shall be dangerous they shall order it to be altered or removed in such manner as they shall direct; and if their directions shall not be complied with, the firewards shall cause such removal or alteration to be made at the expense of the occupants of the building. If any person shall refuse admittance to the firewards while acting under this section, or shall not make the removal or alteration by them directed, he shall on summary conviction thereof before a justice of the peace forfeit a sum not exceeding eight dollars, to be recovered together with the expenses of removal or alteration in the name of the firewards or any of them, and in default of payment the offender may be imprisoned for a period not exceeding ten days.

Power of firewards to enter buildings and make orders respecting dangerous chimneys.

Penalties for refusing admission.

22. If any two firewards shall consider it proper to inspect the placing or situation of any combustible materials they may demand admittance into any building or place for that purpose; and if they shall deem the same dangerous they shall direct the occupant of the building or place to remove such materials or alter the placing thereof; and if he shall neglect to obey them they may make the removal or alteration at his expense; and if any person shall refuse admission to the firewards while acting under this section, or shall not carry out their orders, he shall on summary conviction thereof before a justice of the peace forfeit eight dollars in addition to the expense of carrying out the direction of the firewards, to be recovered in the name of the firewards or of any of them; and if

Power to remove dangerous materials.

Penalties incurred, how enforced.

CHAP. 63. the penalty and expenses shall not be paid with costs, the offender may be imprisoned for a period not exceeding ten days.

Provisions re- 23. No person shall keep at any one time in any one  
specting gun- place within the limits of the firewards, or in any vessel or  
powder. boat for more than twelve hours after she has reached any  
wharf within the limits, more than twenty-five pounds of  
gunpowder; and if any person shall violate the provisions  
Penalties and hereof he shall on summary conviction thereof before a  
and enforce- justice of the peace forfeit one dollar for every pound of  
ment. such gunpowder over twenty-five pounds, to be recovered  
in the name of the firewards or any of them: but this  
provision shall not extend to any vessel or boat belonging  
to Her Majesty wherein gunpowder may be kept for  
public purposes; and all prosecutions hereunder shall be  
commenced within three months after the offence shall be  
committed.

Warrant to issue 24. Any justice of the peace upon complaint on oath  
to search for by a fireward that he has reasonable cause to suspect that  
gunpowder, on dangerous quantities of gunpowder are kept in any place  
complaint of fire- contrary to the provisions of the last section, may issue  
ward, and pro- his warrant to search therefor in the day time; and if  
ceedings there- admittance under the warrant shall be refused, and such  
under. refusal shall be made appear on oath, the justice may grant  
a further warrant to break open the place where such  
gunpowder is supposed to be deposited: and if upon  
any search a greater quantity than twenty-five pounds of  
gunpowder shall be found the fireward may seize and sell  
such excess at public auction, and the proceeds shall be  
applied for the purposes of this Chapter.

Council to make 25. The council may make regulations to prevent the  
regulations, rela- occurrence, increase or spreading of fires, and to prevent  
tive to fires, the unnecessary ringing of fire bells, or the destruction  
thereof or of their appurtenances, and shall have the  
management and control of the engine men and firemen,  
and may increase or diminish their numbers; and shall  
have general powers for the due carrying out of the  
provisions of this Chapter, and may affix penalties for breach  
of any such regulations not exceeding eight dollars.

Fine for injuring 26. If any person shall wilfully destroy or injure any  
public wells, &c. public well or pump or fire plug, or any engine or fire  
implements within the limits to which this Chapter extends,  
he shall on summary conviction thereof before a justice of  
the peace forfeit twenty dollars; and in default of payment  
and no effects being found whereon to levy may be  
imprisoned for not more than ten days.

27. The firewards shall annually appoint a chairman who shall act as treasurer of the board, and shall submit his accounts annually to the firewards to be audited and signed by them and submitted to the council for examination and approval.

CHAP. 63.

Chairman of firewards, how appointed, office, duties, &c.

28. All penalties recovered hereunder shall be applied under the direction of the council towards the purchasing and keeping in repair of engines and fire implements, and the sinking and keeping in repair of pumps and wells, and generally in carrying out the objects of this Chapter; and the council may at any time direct new engines and fire implements to be procured for any town herein mentioned which may be within their jurisdiction, and new wells to be sunk and pumps placed therein; and the expenses thereof and of keeping them or those already in use in repair, and all such further sums as may be requisite for the purposes of this Chapter, shall be assessed, levied and collected within the limits of the town where the expenses shall be incurred, in the same manner as poor rates are assessed, levied and collected, and shall be paid over to the municipality treasurer to be applied under the direction of the council for the purposes contemplated.

Application of penalties.

Fire implements, how provided and repaired.

Expenses, how levied and collected.

29. Whenever any building or property shall be injured or destroyed by fire and the cause or origin thereof shall not be known, the mayor of the City of Halifax within the City of Halifax, the warden of any incorporated town within such incorporated town, and any two justices of the peace in other parts of the Province, shall cause an investigation to be made to ascertain the cause or origin of the fire: and the same shall take place before the stipendiary magistrate or two or more aldermen in the City of Halifax, or the recorder or any two councillors in any incorporated town, or before two or more justices in other places, who shall have power to enforce the attendance of such persons to give evidence before them as they may require by summons or warrant under their hands and seals, and to examine them under oath; and the proceedings and all depositions connected therewith shall be returned to the prothonotary of the Supreme Court of the county where the fire has taken place and be filed by him in his office.

Proceedings on investigation as to origin of fires.

30. The word "firewards" when used in this Chapter shall include one or more of them, unless otherwise expressed or repugnant to the context.

"Firewards" defined.

## CHAP. 64.

## CHAPTER 64.

## OF BOARDS OF FIRE ESCAPES.

- Boards of fire escapes, creation of. 1. A board is hereby created and constituted in every city, town and village in the Province of Nova Scotia which shall have jurisdiction in reference to fire escapes and the prevention of loss of life by fire, and every such board shall be designated by the name of the place in which it has jurisdiction, and the same is hereby incorporated under the name of "The Board of Fire Escapes for the city (town or village) of \_\_\_\_\_".
- Board, how composed. In City of Halifax. In incorporated towns. In other places. 2. Every such board shall be composed of three persons. In the City of Halifax the inspector of buildings, the chairman or principal officer of the fire department, and the recorder of the city for the time being, shall form such board. In incorporated towns the warden or mayor, the principal officer of the fire department, if any, and the town clerk for the time being, shall form such board; and in case there should be no fire department the senior member of the town council shall be substituted in place of the chief officer of the fire department. The council of the municipality of each county or district may at any meeting of the council held after the passage of this Chapter appoint three qualified persons to compose such board in any unincorporated town or village within the county or district where the same is required, and shall from time to time fill any vacancies in said boards.
- Jurisdiction of boards. 3. In the City of Halifax and in each incorporated town the board of fire escapes shall have jurisdiction within the corporation limits, and in every other case the limits of the jurisdiction shall be defined by the municipal council at the time the members of each board are first appointed, and the limits thereof may be altered and extended from time to time by said council.
- Boards to examine buildings and have power to order fire escapes. Appeal. 4. It shall be the duty of each board to examine all buildings within its jurisdiction which it may consider dangerous and not constructed so as to afford ready egress to its inmates in case of fire, and it shall have power to order the erection and maintenance of strong and suitable fire escapes on, in and from all buildings where it may deem the same necessary; and the decision of the board as to the number, kind, size, nature and position of the fire escapes to be adopted in each case shall be subject to appeal to arbitrators, one to be chosen by the party claiming to be aggrieved by such decision, one by the board, and a third by the two so chosen; and the decision of a majority of such arbitrators shall be final.

5. Each board shall pay particular attention to all churches, charitable institutions, poor houses, insane asylums, school buildings, factories, theatres, hotels, and other buildings within its jurisdiction in which an unusual number of persons work, congregate or reside; and it shall have power to order the enlargement or alteration of the doors, passage ways, stair cases and windows in all such buildings in such manner as it may deem best for the protection of the inmates, and so as to afford a ready means of escape in case of fire or panic.

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Boards to pay particular attention to churches, charitable institutions, &c.

6. The board shall have power to order the alteration of any fire place, chimney, furnace, heating apparatus or pipe for the conveyance of smoke or heated air, when it may consider the same dangerous.

Boards have power to alter fire places, &c.

7. In case the owner of a building or his agent who has been required to erect a fire escape or make alterations in his building shall differ from the board in opinion as to the necessity thereof, he shall on giving written notice to the board be entitled to be heard before it on a day to be fixed by the board, and may produce witnesses who shall be examined under oath; and the board shall reconsider the matter, and after hearing the party and his witnesses make a decision thereon, which shall be subject to appeal as in the fourth section defined, and to the like board of arbitrators chosen as in said section mentioned; and the owner or agent shall without delay proceed to carry out the directions of the board or of the arbitrators on appeal from the decision of the board.

Provisions in case of dispute between owner and board.

8. No order or direction of the board shall be deemed to have been performed until it has been certified in writing by the chairman or two members of the board that the work has been done to the satisfaction of the board.

Performance of work ordered by board, to be certified.

9. The board or any of its members shall have the right and power to enter in and upon any building or premises within its jurisdiction at all reasonable hours for the performance of its duties, and remain there as long as may be necessary to make a thorough examination of the building and its surroundings.

Boards have right to enter any building or premises.

10. All fire escapes erected or to be erected under the provisions of this Chapter shall be always maintained in good order and well painted to the satisfaction of the board.

Fire escapes to be painted and kept in good order.

11. The positions of the fire escapes and the way of access to them from the inside of the buildings shall if required by the board be indicated by printed notices and colored lights, or in such other way as the board shall direct.

Position of fire escapes, how indicated.

12. The owner of any building in which any fire escape is ordered to be erected or maintained, or any

Notice to owner, how given.



CHAP. 64. alteration of any door, passage, staircase or window required, shall be notified thereof in writing signed by the chairman of the board or any two of its members; and the mailing of such notice addressed to the owner or his agent if any within the district, and leaving a copy thereof on the premises in which the erection, maintenance or alteration is required to be made, shall be a sufficient notice to the owner thereof and his agent.

Who to be deemed owner, and in certain cases, who liable.

13. For the purposes of this Chapter the person entitled to the equity of redemption in the property and the mortgagee in possession shall be deemed to be the owner thereof; and if no owner resides within the jurisdiction of the board, or if the owner is a married woman, an infant or insane person, the agent of the owner or person collecting the rent if any shall also be personally liable for all violations of this Chapter.

When more than one owner.

14. If the building is owned by more than one person, any one or more of its owners shall be liable for all violations of this Chapter in respect thereof; and all penalties may be recovered against them or any of them individually, without joining the other owners; provided that no more than one suit shall be brought for the same penalty.

Penalties for violation of this Chapter.

15. All owners of buildings within the jurisdiction of any board of fire escapes or their agents who shall, after receiving sixty days' notice thereof in writing, refuse or neglect to obey and perform any order of the board made under the provisions of this Chapter, or otherwise violate the provisions hereof, and all persons whomsoever who shall in any wise obstruct or hinder any board of fire escapes hereby constituted or any of its members in the performance of their duties, or refuse them access to any building within their jurisdiction contrary to the provisions of this Chapter, shall forfeit and pay a penalty of not less than twenty dollars nor more than one hundred dollars, to be recovered with costs as hereinafter mentioned, and in default of payment if sufficient goods cannot be found whereon to levy shall be imprisoned in the common gaol for the county for one day for each dollar of the penalty and costs which remains unpaid.

Separate offence.

16. In cases of non-compliance with the orders of the board, every week that elapses after the expiration of the sixty days' notice until the order is fully complied with and the certificate obtained as hereinbefore provided, shall constitute a separate offence.

Penalties, how recovered.

17. All penalties shall be recovered in the name of the board of fire escapes for the city, town or village in which the same has been incurred, before a stipendiary magistrate or two justices of the peace having jurisdiction

in the city, town, municipality or district, in a summary way, and the forms in the schedule annexed, or similar ones, may be used for that purpose. CHAP. 64.

18. In case of conviction the magistrate or justices may allow a sum for costs not exceeding five dollars, and if the amount of penalty and costs is not paid within forty-eight hours a warrant of distraint shall be issued therefor, and if on the return of said warrant the penalty and costs or any part thereof remain unpaid, and the officer to whom the warrant was directed has been unable to find sufficient property to satisfy the same, the magistrate or justices shall commit the person or persons convicted to the county gaol, there to be imprisoned one day for every dollar of the penalty and costs remaining unpaid. All process shall be directed to the marshal chief constable or other officers of the municipality or district in which it is issued. In case the defendant shall not appear, the magistrate or justices shall on proof of the service of the summons proceed to hear and decide the matter in his absence.

Costs.

When warrant of distraint may issue.

When defendant may be imprisoned.

Justices may decide in absence of defendant.

19. Immediately after the passing of this Chapter, or so soon as said boards are appointed by the municipal councils, each board of fire escapes shall meet and elect a chairman who shall conduct the correspondence of the board and issue and sign all official notices. Such chairman shall hereafter be elected annually in the month of May, and each chairman shall continue in office until his successor has been appointed.

Boards to elect chairman.

20. The boards shall after organization proceed with as little delay as possible to make a careful examination of all buildings within their jurisdiction which they may deem to be dangerous or to require their attention, and issue all necessary notices in relation thereto. They shall revisit such buildings as often as they shall deem it necessary to see that their orders are carried out and the fire escapes efficiently and properly maintained, and they shall meet at regular intervals for the transaction of business.

Boards to examine buildings and continue supervision thereof.

21. Each board of fire escapes shall report annually to the Provincial Government on or before the fifteenth day of January:—

Boards to report to Provincial Government.

- (1.) The number of fire escapes erected during the year;
- (2.) The alterations made in buildings by order of the board;
- (3.) The names of persons who have neglected and refused to comply with the orders of the board;

CHAP. 64. (4.) The proceedings taken to enforce said orders and the result, including the amount of the penalties paid.

Remuneration of boards.

22. The members of the boards of fire escapes shall be remunerated for their services, and the amounts to be paid them annually shall be fixed by the councils of the City of Halifax, incorporated towns and municipalities respectively, who are hereby authorized to add such amounts to their several annual assessments.

Penalties and costs, how appropriated.

23. All penalties and costs recovered under this Chapter shall be paid to the treasurer of the city, town or municipality in which the board in whose name they are recovered has jurisdiction, and shall form part of the general funds of said city, town or municipality respectively.

Arbitrators' fees.

24. The fees to be paid to the arbitrators appointed under the fourth section of this Chapter shall be such as may be fixed by the council of the city, incorporated town or municipality as the case may be, and the said council is hereby empowered to fix the same.

If the decision of the arbitrators be favorable to the party appealing the fees shall be paid by such city, incorporated town or municipality; but if the decision shall be against the party appealing such party shall pay the arbitrators' fees.

Application of Chapter.

25. Nothing in this Chapter shall be construed to apply to any building under two and a half stories in height.

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#### SCHEDULE.

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##### *Form of Summons.*

Canada, }  
Nova Scotia, }  
SS. }

To the City Marshal or his deputy (*or as the case may be*):

You are hereby commanded to summon A. B. of  
to be and appear before me at \_\_\_\_\_ in \_\_\_\_\_ on the  
day of \_\_\_\_\_ at \_\_\_\_\_ o'clock a. m., to answer to  
the suit of The Board of Fire Escapes for the \_\_\_\_\_ of  
under the provisions of Chapter 64 of the Revised  
Statutes of Nova Scotia, Fifth Series, for refusing and  
neglecting after due notice to obey an order of said board,  
bearing date the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18 \_\_\_\_\_, whereby  
he was required to erect a fire escape on the building of  
in the town of \_\_\_\_\_, [*or make an alteration*

or enlargement under the provisions of section five]\* (setting out the purpose of the order as the case may require and defining the building.) Hereof fail not and make due return. CHAP. 64.

Witness my hand and seal at \_\_\_\_\_ this day  
of \_\_\_\_\_, A. D. \_\_\_\_\_ J. S. (seal.)

*Form of Conviction.*

Canada, }  
Nova Scotia, }  
SS. }

Be it remembered that on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_, at \_\_\_\_\_ in the county of \_\_\_\_\_, A. B. is convicted before the undersigned, a stipendiary magistrate for the \_\_\_\_\_ of \_\_\_\_\_ (or two of Her Majesty's justices of the peace for the \_\_\_\_\_ of \_\_\_\_\_) at the suit of the Board of Fire Escapes for the \_\_\_\_\_ of \_\_\_\_\_ under the provisions of Chapter 64 of the Revised Statutes of Nova Scotia, Fifth Series, for that the said A. B. (*state the offence as in the summons*) and I (or we) adjudge the said A. B., for his said offence, to forfeit and pay a penalty of \_\_\_\_\_ dollars and \_\_\_\_\_ dollars for costs, to be paid and applied according to law; and if the said sums be not paid within forty-eight hours I (or we) order that the same be levied by distress and sale of the goods and chattels of the said A. B., and in default of sufficient distress I (or we) adjudge the said A. B. to be imprisoned in the common gaol of the county of \_\_\_\_\_ for the space of one day for each dollar of the penalty and costs remaining unpaid.

Given under \_\_\_\_\_ hand and seal at \_\_\_\_\_ this day  
of \_\_\_\_\_, A. D. \_\_\_\_\_ J. S. (seal.)

*Warrant of Distress.*

Canada, }  
Nova Scotia, }  
SS. }

To

Whereas, A. B. was on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_, duly convicted before me (or us) at the suit of The Board of Fire Escapes for the \_\_\_\_\_ of \_\_\_\_\_ under the

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\* If for a continued offence insert the following, "and continuing such neglect and refusal for *one week* after the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_."

CHAP. 64. provisions of Chapter 64 of the Revised Statutes of Nova Scotia, Fifth Series, for that (*state offence as in summons and conviction*) and it was thereby adjudged that the said A. B. should, for his said offence, forfeit and pay a penalty of           dollars and           dollars for costs, to be paid and applied according to law, and it was thereby ordered that if the said sums were not paid within forty-eight hours the same should be levied by distress and sale of the goods and chattels of the said A. B.; and in default of sufficient distress it was adjudged that the said A. B. should be imprisoned in the common gaol for the county of           for the space of one day for each dollar of the penalty and costs remaining unpaid;

And whereas, the said A. B. being so convicted, has not paid the said sums amounting to           dollars within the space of forty-eight hours from the time of his conviction: \*

These are therefore to command you forthwith to make distress of the goods and chattels of the said A. B., and if within five days next after the making of said distress the said sums, together with the reasonable charges of taking and keeping the distress shall not be paid, you do then sell the goods and chattels so by you distrained and pay to me out of the proceeds of said sale the said penalty and costs, to be applied according to law, and that you retain the expenses connected with taking, keeping and sale of said distress, and pay the balance, if any, on demand to the said A. B.; and if not sufficient distress can be found, that you certify the same unto me to the end that such further proceedings may be had thereon as to law doth appertain.

Given under my hand and seal at           this           day  
of           A. D.           .

J. S. (seal.)

*Commitment for want of Distress.*

Canada,            }  
Nova Scotia,    }  
SS.                }

To                   , and the keeper of the common gaol of the county of           .

Whereas, (*copy warrant of distress to* \*);

And whereas, on the           day of           , A. D. 18   , a warrant of distress was issued by me, pursuant to law, to levy the said sums by distress and sale of the goods and chattels of the said A. B.;

And whereas, it appears to me by the return of said CHAP. 65.  
warrant or otherwise that no sufficient distress whereon to  
levy said sums could be found, and there is still due in  
respect thereof the sum of            dollars:

These are therefore to command you, the said marshal  
(or constable), to take the said A. B. and him safely to  
convey to the common gaol of the county of           , and  
there deliver him to said keeper, together with this precept;  
and I do hereby command you, the said keeper, to receive  
the said A. B. into your custody in the said common gaol,  
there to imprison him for the space of            days, unless  
the said sum of            be sooner paid unto you,  
the said keeper, and for so doing this shall be your  
sufficient warrant.

Given under my hand and seal at            this            day  
of           , A. D. 18           .

J. S. (seal.)

## CHAPTER 65.

### OF THE PROTECTION OF WOODS AGAINST FIRES.

1. It shall not be lawful for any person to set out, <sup>Fires, when to</sup>  
light or start, or cause to be set out, lighted or started any <sup>be started, &c.</sup>  
fire in or near any woods, except for the purpose of clearing  
land, cooking, obtaining warmth, or for some industrial  
purpose, and in cases of lighting or starting fires for any  
of such purposes the obligations and precautions imposed  
by the two following sections shall be observed.

2. Every person who shall make or start, or cause to <sup>Precautions in</sup>  
be made or started a fire for the purpose of clearing land <sup>case of clearing</sup>  
shall exercise and observe every reasonable care and pre-  
caution in the making and starting of such fire, and in the  
managing of and caring for and controlling the same after  
it has been made and started, in order to prevent the same  
from spreading and burning up the trees, shrubs or plants  
surrounding, adjoining or in the neighborhood of the place  
where it has been so made and started.

3. Every person who shall between the first day of <sup>Precautions, in</sup>  
May and the first day of December make or start, or cause <sup>case of cooking,</sup>  
to be made or started, a fire in or near the woods, or upon <sup>&c.</sup>  
any island for cooking or obtaining warmth, or for any  
industrial purpose, shall—

(a.) Select a locality in the neighborhood in which  
there is the smallest quantity of dead wood, branches,

CHAP. 65. brushwood, dry leaves, resinous trees, heath, peat, turf, dry moss, or vegetable matter of any kind.

(b.) Clear the place in which he is about to light the fire by removing all dead wood, branches, brush wood, dry leaves, resinous trees, heath, peat, turf, dry moss and other vegetable matter from the soil within a distance of five feet from the fire in every direction.

(c.) Exercise and observe every reasonable care and precaution to prevent such fire from spreading, and carefully extinguish the same before quitting the place.

Precautions as to matches, &c.

4. Any person who shall throw or drop any burning match, ashes of a pipe, lighted cigar, or any other burning substance, or who shall discharge any fire arm in the woods, barrens, fields, or other place where there is vegetable matter, shall be subject to the pains and penalties imposed by this Chapter if he neglects completely to extinguish before leaving the spot the fire of such match, ashes of a pipe or cigar, wadding of the fire arm, or other burning substance.

Double damages in certain cases.

5. Every person who shall make, light or start, or cause to be made, lighted or started a fire on any land not owned by himself, or shall not prevent any fire made, lighted or started on his own land from extending to land not owned by him, shall if such fire so extend in every case forfeit double damages to the Crown or private person, as the case may be, injured by said fire. If it be clearly established that such fire has spread in consequence of his negligence, such damages shall be in addition to any penalties imposed by this Chapter.

Owner to be deemed offending party.

6. The owner or occupant of the land upon which any fire mentioned in the foregoing sections shall be made or originate shall be deemed and taken to be the party offending, and shall be liable to the several penalties provided by this Chapter, unless such owner or occupant shall prove to the satisfaction of the magistrate, court or judge before whom he shall be tried that such fire was not made, lighted or started by him, nor by any person by his direction.

Chapter, how made known to employees.

7. Every person in charge of any drive of timber, or of any party of men engaged in lumbering, railroad building, surveying or exploring, or any other party requiring camp fires for cooking or other purposes, shall provide himself with a copy of this Chapter, and shall take steps to make the men employed by him acquainted with its provisions.

Precautions as to woods, barrens, &c.

8. Whenever any woods or barren shall be on fire it shall be the duty of county councillors, justices of the peace, sheriffs, coroners, supervisors of roads, and overseers of highways, constables, and each and every one of them,

to order so many of the men living or residing in the neighborhood of the place where such fire shall be, as they shall severally deem necessary, to repair to the place where such fire shall prevail, and there to assist in extinguishing the same or in stopping its progress, and any such person so ordered who shall refuse or neglect to obey such order shall be guilty of a violation of this Chapter. CHAP. 65.

9. All locomotive engines on any railway which passes through any woods shall by the company using the same be provided with and have in use all the most improved and efficient means used to prevent the escape of fire from the furnace or ash pan of such engines, and the smoke stack of each wood burning locomotive so used shall be provided with a bonnet or screen of iron or steel wire netting, the size of the wire used in making the netting to be not less than number 19 of the Birmingham wire gauge, or three sixty-fourth parts of an inch in diameter, and shall contain in each square inch at least eleven wires each way at right angles to each other, that is in all twenty-two wires to the square inch, or in the case of coal burning locomotives the smoke stacks used shall be constructed of the newest and most improved pattern, the standard to be that of the Intercolonial Railway. Precautions as  
to locomotives.

10. It shall be the duty of every engine driver in charge of a locomotive engine passing over such railway to see that all such appliances as are above mentioned are properly used and applied, so as to prevent the unnecessary escape of fire from any such engine as far as it is reasonably possible to do so. Duty of engine  
drivers.

11. Wherever railways pass through woods the railway company shall clean from off the sides of the roadway the combustibile material by careful burning at a safe time or otherwise. When railways  
pass through  
woods.

12. Any person violating the first, second, third, fourth or fifth section of this Chapter shall be liable to a penalty of not less than twenty nor more than four hundred dollars for each offence. Penalty for vio-  
lating sections  
1-5.

13. Any person violating the seventh, eighth or tenth section shall be liable to a penalty of not less than five nor more than one hundred dollars for each offence. Penalty for vio-  
lating section 7,  
8 or 10.

14. Any railway company permitting any locomotive engine to be run in violation of the provisions of the ninth section of this Chapter shall be liable to a penalty of one hundred dollars for each offence. Penalty on rail-  
way companies  
for violating sec-  
tion 9.

15. In all actions for the recovery of the penalty mentioned in the preceding section, or for damages resulting from fires set by locomotives, it shall not be necessary to prove the name or number of the engine nor the name Certain facts un-  
necessary to be  
proved in action.



CHAP. 65. of the engineer or foreman in charge of such locomotive when the fire was started.

Penalty for violating section 11. 16. Any railway company violating the eleventh section of this Chapter shall be liable to a penalty of one hundred dollars for each offence.

Penalty, how sued for, recovered and applied. 17. Any penalty imposed by this Chapter may be sued for and recovered in the same manner as a private debt before any tribunal having jurisdiction over the amount claimed, by any person who may sue for the same, and when recovered one half shall be paid to the complainant or prosecutor, and the other half to the treasurer of the county or municipal district wherein the offence has been committed. Provided however that in case of any offence against the eighth section the whole of the penalty recovered shall be applied as a reward to such person or persons, not being guilty of any offence against this Chapter, as the officers mentioned in said section, or a majority of such of them as shall have witnessed the fire in connection with which the offence shall have been committed, shall deem best entitled thereto for superior exertions in making known, extinguishing or stopping the progress of such fire, but if no person shall be deemed entitled under this proviso for meritorious exertions, then the fine under the eighth section shall be appropriated as in cases under the other sections.

Imprisonment for non-payment of penalty. 18. In case the amount of any penalty recovered and costs be not paid forthwith the offender or defendant shall be committed to the common jail, and shall not be admitted to the benefit of any statute for the relief of insolvent or indigent debtors or for enabling such debtors to procure their discharge, or of any Act to abolish imprisonment for debt, until he shall have undergone imprisonment without jail limits of one day for each dollar of such penalty and costs.

Time for bringing action. 19. Every suit for any contravention of this Chapter shall be begun within six calendar months immediately following such contravention.

Provisions of Chapter, how enforced. 20. It shall be the duty of all county councillors, stipendiary magistrates, justices of the peace and other county officers, and the special duty of all deputy surveyors and other officers of the department of crown lands, and the chief and other game commissioners and of all game wardens, to enforce the provisions and requirements of this Chapter, and in all cases coming within the knowledge of any such officers to prosecute or sue every person guilty of a breach of any of the requirements or provisions of the same, under a penalty of not less than ten nor more than one hundred dollars for each omission of duty.

21. The municipal council of every county or district shall have power to make regulations for the more effectual carrying out of the purposes of this Chapter, and the prevention of damage by setting fire to and burning woods, underbrush and marsh lands, and may affix penalties for breach thereof not exceeding eighty dollars for any one offence. Such regulations when not inconsistent with this Chapter nor with any other law in force in the Province shall when approved by the Governor-in-Council have the force of law, and any offence against them shall be regarded as an offence against this Chapter. The fact that any county or district council has not made or shall not make any such regulations shall not in any way prevent or interfere with the full operation of this Chapter within such county or district.

CHAP. 66.  
Powers of municipal councils.

22. In this Chapter the word "woods" shall include wood, forest, tract covered by underwood, barren, and dry marsh or bog.

Interpretation clause.

23. Nothing in this Chapter contained shall be held to limit or interfere with the right of any party to bring and maintain a civil action for damages occasioned by fire, and such right shall remain and exist as though this Chapter had not been passed, except that such right shall be extended as provided in the fifth section of this Chapter.

Not to interfere with right of action for damages.

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## CHAPTER 66.

### OF STRAY CATTLE AND ANIMALS GOING AT LARGE.

1. Whenever between the first day of November and the first day of May any horses or cattle or any swine or sheep shall stray into the yard, barn or enclosure of any person, or be astray and on the premises of any person to whom the owner thereof is unknown, such person may detain the same; and if not claimed within twenty-four hours he shall forthwith thereafter transmit to the town clerk of the township, or if the place be not within any township then to the town clerk of the adjoining township, a description of every such animal, with the color, size, ear-mark if any, age and particular marks thereof, so as the owner may be enabled to recognize it by the description, and shall at the foot thereof write a notice of the time and place of finding such animal, and also the place where the same is detained.

Stray horses, cattle, &c., how to be dealt with.

## CHAP. 66.

Town clerk's duties and fees.

2. The town clerk shall file the description and notice and post up a copy thereof in his office and in three or more public places in the township for at least ten days after he has received the same, for which services he shall be entitled to a fee of twenty cents for every animal.

Proceedings where no claimant appears.

3. If no person shall claim the animals within ten days after such notice is posted up the finder may apply to a justice of the peace, who upon proof of the notice having been duly posted shall by order under his hand direct any constable to sell the animals, and the constable shall forthwith sell the same, having first given notice by advertisements posted in three of the most public places within the township or settlement for at least six days. No sale shall however take place between the thirtieth of April and the first of December, but in case there shall not be sufficient time after the receipt of the order to advertise the sale for some day before the first day of May the constable shall not proceed to sell until after the thirty-first of October.

Application of proceeds of sale.

4. After deducting from the proceeds of sale five per cent, for the constable for his services in advertising and selling and the reasonable expenses of keeping the animals, together with the town clerk's fee, the balance shall be paid to the overseers of the poor for the place where the animals were found, to be applied to the use of the poor, unless claimed by the owner of the animals within twelve months after sale, in which case it shall be paid to the owner.

Fees payable when property claimed before sale.

5. If the owner shall claim his property before sale he shall be bound to pay the finder his reasonable expenses of keeping and also the town clerk's fee, and if advertised the reasonable expense of advertising.

Dispute as to ownership or expenses, how settled.

6. If any question shall arise between the owner or overseers of the poor and the finder, either respecting ownership or expenses of keeping, either of the parties may apply to two justices of the peace, who shall determine the matter and make such order therein as may appear just.

Fines for detaining cattle and not proceeding as in this chapter directed.

7. If any person who may have detained any such stray animal shall not within a reasonable time transmit the description and notice to the town clerk as hereinbefore directed, he shall forfeit for every horse or head of cattle not more than eight dollars, and for every hog or sheep not more than four dollars.

Council may make regulations and affix penalties.

8. The municipal council of any municipality may make regulations for preventing or regulating the going at large of horses, cattle or sheep, and may affix penalties for the breach of any such regulations, not to exceed ten dollars, and may also appoint cattle reeves.

9. The council for any municipality may make by-laws CHAP. 67.  
to prevent the running at large on any public street, square, Council may make by-laws and affix penalties.  
common or other public grounds within such municipality  
of any horses, asses, mules, cattle, sheep or swine, and may  
affix penalties therefor, with powers of confiscation, forfeiture  
and sale if considered necessary. Such by-laws may if  
deemed advisable be made to apply to particular portions  
of counties, districts or townships to be set off by proper  
descriptions and boundaries.

10. The council shall make regulations for preventing Council shall make regulations respecting infected cattle, geese, dogs, &c.  
the going at large of infected horses and cattle and the  
spreading of distempers among them, and also as to the  
going at large of dogs, swine, and of vicious animals and of  
geese, and shall affix penalties for breach of any such  
regulations, which penalties shall not exceed as respects  
horses and cattle twenty dollars, and as respects dogs,  
swine and geese four dollars.

11. Dogs found chasing or worrying sheep may be Dogs chasing sheep may be killed.  
killed, and the owners of such dogs shall have no right of  
action against the persons killing the same.

12. The owners of dogs that have been found chasing Penalty upon owners.  
or worrying sheep shall be liable to a penalty not exceeding  
twelve dollars if on being notified of the fact they continue  
to allow such dogs to go at large.

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## CHAPTER 67.

### OF FENCES, AND IMPOUNDING OF CATTLE.

1. All fences of enclosed lands shall be built of stones, Fences, how constructed.  
pickets, boards, logs, poles, brush, or posts and rails, unless  
the lands are bounded by ponds, unfordable rivers, or the  
sea, or surrounded by sufficient hedges.

2. Such fences shall be at least four feet and a half Height of fences.  
high, except stone walls and picket and board fences,  
which shall be at least four feet high.

3. If any damage be done by horses, sheep, goats, Damages by cattle, from whom recovered.  
swine or cattle breaking into and destroying the product  
of such enclosures, the same being enclosed at the time  
with a sufficient fence in the judgment of the fence  
viewer, the owner of the animals trespassing shall pay to  
the party injured the value of such damages.

4. The damages shall be ascertained by an appraise- Damages to be ascertained by appraisement.  
ment of three persons living in the neighborhood, being

CHAP. 67. first sworn before a justice truly to value the same, who shall be entitled to a fee of twenty-five cents each.

Damages recoverable after notice.

5. If the owner refuse to pay the amount appraised and such fees, upon notice thereof the party injured may maintain an action therefor as for any other debt.

Partition fences, how erected : differences, how adjusted.

6. The proprietor of a field adjoining another enclosed and improved shall build and maintain his proportion of fencing on that part of such land which adjoins his own ; and in case of neglect so to do after three days' notice to that effect any fence viewer may forthwith cause such deficient fence to be made or repaired, as the case may be ; and the person so neglecting shall pay double the expenses of making or repairing such fence, to be recovered by the fence viewer with costs as any other debt. If adjoining proprietors differ as to the part or proportion of a new division fence to be made by each, the nearest fence viewer shall decide the same.

Fence viewers' charges ; fine for neglect of duty.

7. No fence viewer shall be allowed more than sixty cents per day for his own trouble and time ; and for each neglect of duty when notified he shall forfeit eight dollars

Obligations of owners of land adjoining improved land.

8. Where the owner of land, improved or cultivated, shall have made or hereafter shall make his proportion or one half part of the fence separating his land from the improved or cultivated land of the adjoining proprietor of permanent or durable materials or growth, to be determined as hereinafter provided, he shall not nor shall any person claiming under him be required to erect or repair the fence in any other place as between his land and that of such adjoining proprietor, or any person claiming under him, in case of sale or change of occupancy of any part of the land of the latter, so long as such portion of fence of the kind above mentioned shall be maintained by the person first above referred to or some person claiming under him.

Sufficiency of fences, how determined.

9. Any two justices of the peace of the county in which the lands referred to lie (due notice in writing for at least three days being first given to the proprietor of the adjoining land) may repair to the land and examine the fence and pronounce the same by any instrument in writing under their hands to be made of permanent or durable materials or growth within the meaning of this Chapter, and such instrument in writing shall thereupon be deposited with the clerk of the municipality, in memorial and as evidence of the matters therein stated.

Appeal.

10. Any person feeling aggrieved by the decision of the justices may appeal to the next sitting of the County Court in the county, whose decision affirming or reversing the decision of such justices shall be final.

11. Nothing in the three preceding sections contained shall be construed to affect the title to the lands on which the fences are erected.

CHAP. 67.  
Titles to lands, not affected by three preceding sections.  
Unimproved land, owner not liable to fence.

12. No owner or proprietor of wood or barren or burnt lands not under improvements shall be compelled to make any part of a fence against or on the same.

13. If any damage shall be done by horses, sheep, goats, swine or cattle breaking into and destroying the product of any enclosures, the persons whose fences have been broken and enclosures damaged may impound the cattle so trespassing till the owner shall claim the same and tender sufficient amends.

Cattle, &c., trespassing on enclosures, liable to be impounded.

14. The pound keeper shall thereupon as soon as may be advertise the same in three of the most public places in the settlement where the trespass has been committed, in order that the person injured may proceed against the owner of such animals refusing to pay the damages done thereby.

Pound keeper's duty in such cases.

15. The owner of such animals shall pay to the pound keeper above the damages adjudged under section four twenty cents for every horse or head of cattle and ten cents for every sheep, goat or swine for each day the same shall have been impounded for their support; and in case of refusal to pay the same within eight days after being impounded, with the charge of advertising, the animals shall be publicly sold; and the proceeds, after deducting the pound keeper's charge for supporting them and the damages, shall be paid to the owner if he appear within thirty days; if not, then to the treasurer of the municipality.

Pound keeper's fees, and mode of recovery.

16. If any person shall rescue any animals from the person driving them to the pound he shall forfeit to the party aggrieved four dollars above all damages sustained by the trespass committed by such animals; and if any person break any pound, or by indirect means deliver any animals therefrom, he shall on summary conviction thereof before a justice of the peace pay a fine not exceeding four dollars, and in default of payment shall be imprisoned in the county gaol for a period not exceeding twenty days.

Fines for rescue and pound breach, how recovered.

17. Such rivers, creeks, bays, harbors and inlets of the sea only shall be deemed lawful fences, as in the judgment of the fence viewers of the township or place where such lands lie shall be sufficiently deep and inaccessible to prevent the passing of cattle.

Rivers, creeks, &c., when deemed lawful fences.

18. If any person feel aggrieved by the judgment of the fence viewers as to the lawfulness of such last mentioned fence, or desire the decision of the municipal council instead, such person may apply to the council, who

Appeal from judgment of fence viewers.

CHAP. 68. shall inquire into the matter, and upon hearing the parties and their witnesses may make an order which shall be binding on all fence viewers and others interested.

Damages recoverable if fence broken where lawful. 19. In every case where damage shall be done to the enclosed lands of any person by any of the animals hereinbefore mentioned breaking the fences enclosing the same, the owner of such animal shall be liable for the damage if that part of the fence broken by such animal were lawful, although other parts of the enclosing fence may not be lawful.

Owner liable, if cattle break his portion of fence. 20. The owner of any of the animals hereinbefore mentioned breaking through a division fence which such person is bound to repair and keep up, shall be liable for any damage done by such animal upon the land of another person enclosed or partly enclosed by such division fence, although the same may not be a lawful fence.

Penalty for destroying railings, &c., on side of public grounds, &c. 21. If any person shall destroy or injure any railing, stone wall or fence of any kind placed on the side of any public square, bridge or causeway, he shall forfeit for each offence not less than one dollar or more than eight dollars, in addition to any private damage sustained.

Not to take away common law right for damage. 22. Nothing herein shall be construed to impair the right of action under the common law for damages occasioned by horses, sheep, goats, swine or cattle breaking into lands.

## CHAPTER 68.

### OF THE TRANSPORTATION AND USE OF GUNPOWDER.

Conveyance of gunpowder by land. 1. No person shall convey by land more than one ton of gunpowder at one time.

Protection where over fifty pounds in one cart. 2. More than fifty pounds of gunpowder shall not be placed in any one cart to be land-borne unless the same shall be completely covered with woollen or hair cloth, exclusive of the package and the covering of the carriage.

Carts, where to stop. 3. No carriage conveying gunpowder shall be stopped less than twenty rods from any dwelling house.

Metallic substances not to be on cart with powder. 4. No iron, steel or metallic substance other than copper hoops on the casks shall be placed on any carriage together with any quantity of gunpowder exceeding fifty pounds.

Quantities over fifty pounds, how secured for carriage. 5. No gunpowder exceeding fifty pounds shall be placed in any carriage, but in barrels, half barrels or quarter barrels, tight and well hooped with wood or copper hoops.

6. No more than twenty-five pounds of gunpowder shall be carried from one place to another unless the package be well hooped and sufficiently wrapped with woollen or hair cloth. CHAP. 68.  
Quantities over twenty-five pounds, how secured.

7. If any person shall offend against the preceding provisions of this Chapter he shall forfeit for every offence a sum not exceeding eighty dollars. Forfeitures for offences.

8. Nothing in this Chapter contained shall affect the carriage of gunpowder for Her Majesty's service. Carriage of gunpowder for Her Majesty not affected.

9. Every person who shall blast rocks with gunpowder in any place within one hundred feet from any street, highway or thoroughfare, shall use the most careful precautions in giving notice thereof by blowing horns or otherwise previously to each explosion; and shall limit the quantity of powder to be used, which must not in any case exceed eight ounces in any bore, nor explode more than three bores in any one blasting, and shall cover the spot about to be blasted with a sufficient quantity of bushes, timber, earth, stones or other materials to deaden the force of the explosion. Precautions in blasting within 100 feet from any street, &c.

10. Every proprietor, contractor, builder, workman or laborer concerned in any such blasting shall in case of any neglect of the provisions in the foregoing section be liable to a fine of not less than two dollars and not more than twenty dollars, to be recovered on the prosecution of any person suing for the same; if in the City of Halifax, in the police court; if elsewhere, before any one justice of the peace, with costs; and in case of non-payment shall be liable to imprisonment for a term not exceeding one day for every dollar of such fine; and every person concerned in so blasting rocks without proper precaution shall be responsible in damages to any person who may be injured thereby. Fine, how recovered.  
Person blasting to be responsible for damages.

11. Gunpowder and other similar explosives kept for purpose of sale by retail shall be kept in a metallic case painted red, with the word "gunpowder" distinctly marked on each side thereof, and such case shall be placed in a conspicuous position in a window in the front part of the shop convenient for removal in event of danger from fire. Gunpowder, &c., how kept for sale.

12. The city council of the City of Halifax, the town council of every incorporated town, and the municipal council of every municipality, shall respectively have power to make and from time to time to alter, revoke, amend and annul all such by-laws, ordinances and police regulations as they shall deem necessary for the protection of the public within such city, towns and municipalities, from accidents or danger from the careless use of gunpowder, dynamite and other explosives, and with reference to the Councils to have power to make by-laws, &c.



CHAP. 69. storing, transportation and use of all such explosives, and to ordain that any offender against any such by-law, ordinance or police regulation shall be punished by fine or imprisonment, or by both fine and imprisonment of such amount and duration respectively as they shall ordain, provided that no such fine shall exceed forty dollars, and no such imprisonment shall exceed three months, and that no such by-law, ordinance or police regulation shall be inconsistent with anything hereinbefore contained.

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## CHAPTER 69.

### OF THE CONVEYING OF TIMBER AND LUMBER ON RIVERS, AND THE REMOVAL OF OBSTRUCTIONS THEREFROM.

Commissioners,  
how appointed,  
their jurisdiction  
defined.

1. Upon the written application of twenty freeholders resident in the neighborhood of any river, or owning lands thereon, or interested in rafting and driving logs, timber and lumber, or conveying wood or other articles down such river, setting forth their desire that commissioners should be appointed for clearing and removing obstructions from such river, and for rendering the same more easily drivable, which application shall be first read and approved by the municipal council, who shall in such cases establish the points in the river between which the powers of the commissioners shall be limited, the clerk of the municipality shall return such application into the Provincial Secretary's office, with a certificate of such approval and the limits so established, and thereupon the Governor-in-Council may appoint three or four commissioners for the purposes, of the five succeeding sections of this Chapter.

Powers of com-  
missioners.

2. The commissioners appointed by the Governor-in-Council may remove from the river all obstructions within the limits of their authority and may erect wing-dams or driving dams or sluices, and make such other improvements and erections at such places and in such manner as they shall see fit, and do all other acts necessary to facilitate the passage of logs, timber, lumber, wood and other articles down the river; and the commissioners may make regulations to prevent obstruction to rivers by the throwing or falling into them of slabs and other refuse wood and saw dust from saw mills, and also for the protection of dams, sluices and other erections, and the municipal council may impose penalties for the violation of such regulations, which shall be enforced by summary conviction before a justice of the peace.

Regulations.

Penalties.

3. The commissioners may borrow upon their own credit, or upon the credit of the tolls arising as hereinafter mentioned, such sums of money not exceeding four thousand dollars in the whole as may be necessary for the purposes of their appointment. CHAP. 69.  
Commissioners  
may borrow  
money.

4. The commissioners shall have full power and authority from time to time and as often as may be necessary for the purposes of this Chapter, to enter upon any public or private lands on the river necessary for any of the purposes aforesaid, and for such use shall make to the owner or owners of such lands such compensation as may be agreed upon by and between said commissioners and the said owners as aforesaid; and in case they should not agree the amount of such compensation shall be left to the determination of arbitrators to be selected in manner following, one by the commissioners, one by the owner or owners of the land, and a third one to be mutually chosen by the two first named, who shall examine the locality and determine the amount of such compensation. Commissioners  
may enter public  
or private lands.  
  
Arbitration.

5. When the undertaking is completed the commissioners may collect a toll of such amount and in such manner and under such regulations for enforcing payment thereof as the council may from time to time direct upon logs, timber, lumber, wood and other articles brought down the river within their jurisdiction, and shall apply the tolls to the payment of the amount borrowed with interest, but no toll shall be levied after the amount is liquidated. Tolls to be estab-  
lished; their ap-  
plication.

6. The commissioners shall annually submit an account of their expenditure and proceedings and of the tolls collected to the council for audit, and when approved it shall be filed by the clerk of the municipality. Accounts to be  
submitted annu-  
ally and audited.

7. Nothing herein contained shall be construed to sanction any claim on the provincial revenue in respect of the moneys so borrowed, or to authorize any interference with the navigation or fisheries of the river further than may be absolutely necessary for the purposes contemplated, or to injure or affect private rights further than as expressly provided. Operation of  
Chapter restrict-  
ed.

8. The municipal council shall when necessary make regulations respecting the bringing down of logs, timber and lumber on rivers, and the seasons of the year at which the same shall be brought down, and the removal of obstructions thereto, and also as to the placing and upholding of booms with the consent of the owners of the soil on either side of the river, and the times of continuing such booms, and for preventing the booms from obstructing the navigation of the river, and may fix the rates of boomage that shall be paid to the owners of the booms on articles secured thereby, Council empow-  
ered to make  
regulations.

CHAP. 70. and the manner in which such boomage shall be collected and applied, whether for the repair of the booms or the use of the owners thereof, and also as to the taking of articles from one boom to another, and may appoint persons to take charge of the booms and collect such moneys as may be due under such regulations, and may impose penalties for breach of such regulations of not less than eight dollars nor more than forty dollars ; but nothing herein contained shall authorize the removal of any milldam.

Logs, &c., may be brought down rivers under regulations.

9. Persons may bring logs, timber and lumber down rivers in reference to which such regulations have been made, provided they shall in all respects conform to the regulations and do as little damage as possible to the owners of the soil adjoining.

Definition of the word "river."

10. The word "river" when used in this Chapter shall include streams running into any river.

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## CHAPTER 70.

### OF SEA MANURE.

Council may make regulations respecting sea manure.

1. The councils of the several municipalities may make regulations with regard to the collecting and taking away of sea manure which may be driven by the sea and lodged upon the shores and beaches, and also with regard to the cutting and removal of kelp and rockweed, and for the prohibition of the cutting and removal of the same from any shore, beach or shoal of this Province, at such times and seasons of the year as may be deemed advisable ; and if any person shall transgress such regulations he shall for every such offence forfeit a sum not exceeding eight dollars.

Private rights not affected.

2. Nothing in this Chapter contained shall extend to take away or abridge any private rights or interests in any of such shores or beaches.

## CHAPTER 71.

## OF GUIDE BOARDS AND ROADS OVER ICE.

1. The municipal councils may make regulations for preventing persons from coasting, skating or sliding on the snow or ice down the hills on highways or streets; and may impose a penalty not exceeding one dollar for breach of any such regulation. Councils may make regulations respecting coasting.
2. The parents of minors and the masters of apprentices who shall transgress any such regulation shall be liable to the penalty therefor. Parents and masters responsible for penalties.
3. The council may make regulations for ascertaining the safest track for roads over the ice on harbors, rivers, creeks, lakes or bogs, and for putting down or continuing bushes or other marks for defining the course of such roads, and to prevent the removal or destruction of such bushes or other marks; and may affix a penalty for breach of any such regulations not exceeding four dollars for each offence, which shall be applied one half to the person suing and the other half for municipal purposes. Councils may make regulations respecting tracks and roads over the ice.
4. The expenses incurred in putting down, continuing, repairing and protecting such marks shall form a municipal charge. Expenses, how paid.
5. Whenever the council shall by order direct that guide boards shall be erected on any public roads within their respective counties, and shall specify on what roads and branchings and crossings thereof such guide boards shall be erected, the surveyors of highways and road commissioners shall thereupon erect or set up and afterwards keep and maintain all such guide boards within their respective districts. Guide boards, how erected.
6. Every such guide board shall have an arm corresponding to each road at the branching or crossing whereof it is erected, on which arm the name and distance of the place to which such road leads shall be painted on a white ground in black letters and figures at least two inches in length. Guide board to have arm for each road, with name, &c.
7. Surveyors of highways and road commissioners may appropriate so much of the statute labor or of the statute labor fund of their district as shall be sufficient to erect and maintain thereon the guide boards required by this Chapter. Maintenance, how provided.
8. Surveyors of highways or road commissioners neglecting to erect and maintain within their district the guide boards required by this Chapter shall pay a fine not exceeding ten dollars, to be appropriated one half to the road fund and one half to the prosecutor. Penalty for neglect by surveyors of highways, &c.

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## CHAPTER 72.

## OF PUBLIC EXHIBITIONS.

License for exhibition, how obtained.

1. The clerk of the licenses with the consent of two justices of the peace shall grant a license to any person applying, for holding any show, play or public exhibition, upon such person paying a sum not exceeding five dollars nor less than one dollar per day at the discretion of the officer granting the license; the money to be paid for such license before the granting thereof, and to be paid for every day for which the license is granted to be therein expressed, which license shall not be operative out of the municipality where granted.

Where clerk of licenses absent or living at a distance.

2. If the clerk of the licenses shall be absent or shall reside more than five miles from the place where it shall be intended to hold the exhibition, two justices may grant such license, under and subject to the payments, restrictions and regulations in the first section mentioned; and they shall within thirty days after granting the license make return thereof to the clerk of the licenses, and at the same time pay over the amount of duties received therefor.

Fee on granting license.

3. The clerk of the licenses or justices granting any such license shall be entitled to receive therefor a fee of fifty cents.

Fine for exhibition without license, how recovered.

4. If any person shall hold any show, play or public exhibition without previously obtaining a license he shall forfeit twenty dollars for every day the same shall be held, to be recovered in a summary manner before two justices of the peace, and to be by them within thirty days after receipt paid over to the clerk of the licenses.

Clerk of licenses to pay over fines.

5. The clerk of the licenses shall within ten days before every sitting of the municipal council pay over to the municipal treasurer for municipal purposes all duties and penalties by him received under this Chapter.

City of Halifax and incorporated towns exempted.

6. The provisions of this Chapter shall not extend to the City of Halifax or to any incorporated town.

## CHAPTER 73.

OF THE REGULATION AND INSPECTION OF PROVISIONS,  
LUMBER, FUEL AND OTHER MERCHANDISE.

## BREAD.

1. All bread intended for sale shall be marked in Roman characters with the initial letters of the grain of the flour or meal of which it is made, and with the initials of the christian and surname of the baker, and shall be also marked with the weight thereof. Bread for sale, how marked.

2. All bread intended for sale shall be made to the following weights respectively, and no other, viz., four pounds, two pounds, one pound, and eight ounces. Weight of loaves.

3. No person shall sell any bread that shall not be marked in accordance with the first section, and any person violating the same by having in his possession, selling or offering for sale any bread not duly marked shall forfeit for every loaf not duly marked not less than twenty cents nor more than one dollar. Fine for selling unmarked bread.

4. Every person selling bread\* shall keep a pair of scales and weights in order that the purchasers of such bread may if they require have the same weighed. Persons selling bread shall keep scales and weights.

5. Any justice of the peace, or constable authorized by the warrant of a justice, or the clerk of the market, may visit the premises wherein bread is made or sold, and may search for and weigh all bread therein, and if any bread be found therein under the prescribed weight or not marked as herein directed the same shall be seized, and on proof of the fact before a justice it shall be disposed of to poor persons under the direction of such justice. Justices or constables authorized may seize bread unmarked or short of weight as forfeited.

6. If any person shall obstruct or oppose the officer in making such search or seizure he shall forfeit not less than four dollars nor more than eight dollars. Fine for obstructing officer.

7. Any person selling bread deficient in weight, and the offence being proved by the same being weighed within twenty-four hours after baking before a justice, shall unless the deficiency appear to have been occasioned by some unavoidable accident forfeit not less than ten cents nor more than fifty cents for every half ounce deficient. Fine for selling bread short of weight.

8. If any servant or journeyman in the employ of a baker shall offend against these provisions he shall forfeit not less than four nor more than eight dollars, and in default of payment he shall be imprisoned not less than seven nor more than fourteen days. Fine for servants or journeymen offending.

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9. If any baker shall pay any of the foregoing penalties in consequence of the wilful neglect or default of his servant or journeyman, any justice of the peace upon the application of such baker may cause the offender to be brought before him and order him to pay a reasonable sum by way of recompense, and if he shall not comply with such order may commit him to gaol for a period not exceeding a month.

Certain loaves  
exempted.

10. These provisions shall not apply to loaves made to order and rasped by the desire of the customer, nor to loaves or cakes sold weighing less than half a pound.

Limitation of ac-  
tion.

11. Prosecutions for breach of any such provisions shall be commenced within three days after the offence committed.

## POTATOES, &amp;C.

Edible roots,  
how to sold.

12. Potatoes and all edible roots shall hereafter be sold by weight.

## TARE ON SUGAR.

Tare on sugar,  
how ascertained.

13. The tare to be allowed on the sale of brown or raw sugar shall upon every barrel be twenty-two pounds, and upon every hogshead or other package of the weight of eighteen hundred pounds or less twelve pounds for every hundred pounds of gross weight, and upon every hogshead or other package of such sugar above the weight of eighteen hundred pounds the tare shall be ten pounds for every hundred pounds of gross weight.

Fine for not al-  
lowing tare on  
sale.

14. Any person who shall not allow the full tare as herein prescribed shall forfeit fifty cents for every hundred weight of the sugar upon which such full tare shall not be allowed.

## COAL AND SALT.

Coals, how sold.

15. Coals sold from shipboard by retail shall be sold by the ton weight of two thousand two hundred and forty pounds avoirdupois and its subdivisions.

Coal and salt to  
be measured.

16. All coal or salt sold from shipboard by retail in this Province shall be weighed or measured by officers appointed for the purpose.

Liable to for-  
feiture if deliver-  
ed without being  
measured.

17. If such coal or salt shall be delivered to any truckman or other person without having been weighed or measured according to the two last sections, the seller shall forfeit the same or the value thereof to the use of the poor.

Fees of measur-  
ers.

18. The measurers of coal shall receive from the seller eight and one half cents for every ton, and measurers of salt shall receive three and one half cents for every hogshead, which they shall respectively measure.

19. If any measurer of coal or salt shall undertake to attend the admeasurement of coal or salt from more than one vessel at the same time he shall forfeit a sum not exceeding eight dollars for each offence, and for any neglect or misconduct other than the offence last mentioned a sum not exceeding twelve dollars.

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Fine on measurer for misconduct.

20. Every person who shall wilfully sell or dispose of any coal within this Province under any name or designation other than that of the mine or locality from whence the same may have been obtained shall forfeit a penalty of forty dollars.

Penalty for misrepresentation of kind of coal

21. Any shipmaster or other person bringing coal to any port in this Province from any mine therein shall exhibit on demand thereof to any person desirous of purchasing coal a certificate from the proprietor or shipping officer of the mine from which such coal has been shipped, stating the name or locality or other known designation of such coal and the date of shipment thereof, which certificate the proprietor or shipping officer is hereby required to give to the shipmaster at the time of the shipment of such coal.

Shipmaster shall exhibit certificate of proprietor when required.

22. Any proprietor or shipping officer refusing to give such certificate or giving a false certificate, or any shipmaster or seller of coal refusing to exhibit such certificate on demand or exhibiting a false certificate, shall respectively forfeit twenty dollars.

Proprietor, &c., giving false certificate; penalty.

23. Every such certificate shall on the discharge of the cargo of coal to which it refers be delivered up by the holder thereof to the collector of customs of the port, to be placed upon the file in his office.

Certificate delivered to collector.

#### HAY.

24. Hay may be weighed in scales or by steel-yards duly stamped by the clerk of the market, and weighers shall in the absence of other regulations by the municipal councils receive at the rate of two cents for every hundred weight of hay weighed by them, and seven cents for every mile they shall be required to travel if the distance shall exceed one mile; but the municipal councils may from time to time regulate the rate to be received by weighers of hay in the several municipalities.

Hay, how weighed; weighers' fees.

#### CORDWOOD.

25. Every stick of cordwood intended for retail shall measure four feet in length, accounting half the scarf, and be sound hard wood, and every cord shall be of the full length of eight feet and four feet high and piled close.

Cordwood for retail, its quality and dimensions.



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Cordwood from shipboard, to be measured; measurers' fess.

Fine for selling cordwood without being measured.

What wood to be rejected.

Provisions in case of rotten or crooked wood.

Fine for measurer violating his duty.

26. All cordwood sold from shipboard shall be surveyed and measured before sale by an officer appointed for the purpose, who shall receive seven cents from the seller for every cord by him surveyed and measured.

27. Persons selling such cordwood without having the same surveyed and measured under the last preceding section shall forfeit the same or the value thereof.

28. All sticks of such wood not of the requisite length shall be rejected by the measurer.

29. Persons offering any cordwood for sale shall pile all the crooked and rotten sticks if any separately, and if on the survey the measurer shall find any rotten wood or any crooked sticks in the cord which shall prevent the same being piled close such crooked or rotten sticks shall be rejected, and the deficiency in the cord made good before sale thereof.

30. If any measurer shall violate his duty he shall forfeit a sum not exceeding four dollars for every offence.

## LUMBER.

Boards to be of four qualities; viz. description.

31. In the survey of boards there shall be four qualities, viz. :—

First.—Clear boards at least one inch in thickness.

Second.—Merchantable boards of first quality, sawed of equal thickness throughout, and when not hardwood, squared at the edges with a saw; to be free from rots, waness, worm holes and auger holes; at least seven eighths of an inch in thickness, and containing not less than ten superficial feet.

Third.—Merchantable boards of second quality, of the same dimensions, and free from rots, shakes and worm holes; and,

Fourth.—Refuse, to include all other descriptions of boards.

Dimension deals defined.

32. All dimension deals shall be not less than twelve feet long, nine, eleven, and twelve inches wide, and three inches thick respectively, having an allowance of from one to two inches in the length, from a quarter to half an inch in the breadth, and from one eighth to a quarter of an inch in the thickness; they shall be smooth and fair, of equal width and thickness throughout, butted at both ends with a saw, free from rots, sap, stains, large knots, rents, shakes, worm and auger holes, and shall have the stubshot sawn off.

Plank for exportation, its size and quality.

33. All plank intended for exportation except hardwood plank shall be from ten to twenty feet in length, nine inches in breadth, and three inches and one eighth in thickness, and of the same quality as dimension deals.

34. All hardwood timber for exportation shall be CHAP. 73.  
 squared and smoothly hewed, free from knotty tops, plugs, Hardwood tim-  
 rots, rotten or concave knots, decayed sap or worm holes, ber for exporta-  
 shall be square butted and not less than eight feet in tion.  
 length, the taper not to exceed one inch for every eight feet  
 in length, the wane not to exceed two inches in each corner  
 when the square is under sixteen inches, three inches when  
 it exceeds sixteen inches. In order to ascertain the contents How surveyed.  
 of such, the surveyor shall girt or measure the same at the  
 middle of the stick, and the difference of the squares  
 between any two sides shall not exceed two inches; no log  
 shall have a sweep unless it has two straight sides. All Spruce and pine  
 spruce and pine timber to be merchantable must be free timber.  
 from the above defects, and shall be not less than ten  
 inches square and not less than sixteen feet in length.

35. In the survey of shingles there shall be three Shingles to be of  
 qualities, viz. : three qualities ;  
 No. 1.—Pine or cedar shingles not less than eighteen their descrip-  
 inches long, four inches wide and three eighths of an inch tions.  
 thick at the butt, and clear of sap, slash, shakes, twists, and  
 worm holes.

No. 2.—Pine, cedar, spruce or hemlock shingles not less  
 than sixteen inches long, three and a half inches wide, and  
 from a quarter to a quarter and a sixteenth of an inch  
 thick, to be free from sap, slash, shakes, and worm holes; and,

No. 3.—Refuse, to include all other descriptions of  
 shingles.

No. 1 and 2 shingles shall be put up in bundles not  
 less than twenty-five tiers or courses twenty inches wide ;  
 four bundles to be considered as a thousand.

All shipping shingles for exportation shall be half an inch  
 thick at the butt, and extend the same thickness three  
 fourths of the length, and be shaved from thence to the  
 point, and from four to four and a half inches wide.

36. Clapboards shall be four feet four inches long, five Clapboards, their  
 inches wide, and half an inch thick at the back. length and de-  
scription.

37. Lathwood shall be of fresh growth, straight rift, Lathwood, de-  
 free from bark, heart and knots, and measured by the cord. scription of, and  
how measured.

38. Hogshead staves shall be forty-two inches long, Staves, their de-  
 from three and a half to five and a half inches wide, and scription, and  
 three quarters of an inch thick on the thinnest edge, and mode of calcula-  
 not more than one inch on the back. tion.

Barrel staves shall be thirty-two inches long and half  
 an inch thick on the thinnest edge, and not exceeding three  
 quarters of an inch on the back; to be of good rift, fairly  
 split, free from twists, knot holes, rotten knots, worm holes,  
 and shakes, and shall be calculated by the tale of ten  
 hundred to the thousand.

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Timber, &c., purchased for exportation, shall be as respectively described.

39. Upon any contract or bargain for a quantity of timber or lumber for exportation the same shall be understood to mean that which is hereinbefore described, and the purchaser shall not be obliged to receive any other unless under a special written agreement specifying what he actually is to receive.

Duty of lumber measurers on a survey.

40. The surveyors of lumber shall when required diligently examine and survey every description of lumber described in any of the preceding sections whether for sale or exportation in their respective districts, and shall mark the same as directed by this section at the time of the survey; but if it shall have been previously surveyed in the Province the surveyor shall only re-survey and mark anew the same when he shall have any doubt of the measure; and on every survey he shall furnish the seller and the purchaser each with a certificate thereof specifying the quality and dimensions, and on every stick of ton timber shall mark in figures the contents in cubic feet, the initials of his name, and the private mark of the purchaser; and on all deals and plank shall mark in lead on the ends the length, breadth, thickness and superficial contents, and his own private mark; and on all boards the superficial contents and his private mark.

Fees of surveyors of lumber.

41. The surveyors of lumber shall receive the following fees, viz., for measuring and surveying all ton timber, five cents per ton, together with seven cents for every mile they shall necessarily travel in coming to the place of the survey.

For every thousand superficial feet of deals, plank, scantlings and boards respectively, fifteen cents for surveying and five cents for marking; and for viewing only, where the same shall have been previously surveyed and the surveyor shall doubt the measure, five cents.

For every cord of lathwood, ten cents.

For every thousand shingles, five cents; and for culling and repacking, ten cents.

For every thousand hogshead staves, thirty cents.

For every thousand barrel staves, fifteen cents.

Surveyors' certificates; their effect; provisions in case of dispute

42. The surveyor's certificate shall be binding between the seller and the purchaser, but in case they disagree either party may call in three other surveyors who are in no way interested in the matter in dispute to re-survey the same, and their decision shall be final. If the first survey be confirmed the expense of the second shall fall upon the party by whom it was had, but if the first survey is not established then the surveyor shall bear the expense of the second survey.

43. The surveyor's fees shall in all cases be paid by CHAP. 73. the seller, who shall remove all obstacles in the way of the surveyor which may prevent him from viewing and measuring with facility any timber or lumber which he may be required to survey, and shall if necessary have the same canted. But the purchaser upon any special agreement therefor, or if he shall require a fresh survey, shall pay the surveyor's fees. Fees of survey payable by seller; seller's duty on survey.

44. Upon the survey of shingles, clapboards and staves respectively, those which are deficient in quality or dimensions shall be rejected. Shingles, &c., found defective to be rejected.

45. All shingles and clapboards exposed for sale by quantities in bundles and not holding the number they are marked for shall, unless it appear that part thereof have been accidentally shaken out after packing, be forfeited. Shingles, &c., forfeited when offered for sale, deficient in the marked quantity

46. Any person who shall without the permission of the owner of any timber or lumber, alter, deface or destroy the marks of a surveyor of lumber thereon, shall forfeit a sum not exceeding four dollars for each offence. Fine for destroying surveyor's marks on lumber, &c.

47. Any surveyor of lumber violating any of these provisions shall forfeit a sum not exceeding twenty dollars for each offence. Fine for lumber surveyor violating his duty.

48. All prosecutions under these provisions shall be commenced within twelve months from the time of the commission of the offence. Limitation of actions.

#### APPLES AND POTATOES.

49. The size and dimension of barrels used for putting up or packing apples or potatoes for sale shall be as follows: to wit: the length of the stave or barrel shall be twenty-nine inches, and the heads between the chimes seventeen inches, with a diameter in the centre inside the barrel of nineteen inches, thus corresponding as nearly as possible in shape and size to the Canadian or American flat-hooped flour barrel. Size and dimension of apple and potato barrels.

50. All barrels used for the shipment of apples or potatoes shall have six hoops; that is to say, two on each end and two on intermediate spaces, and shall also have the top head planed that the barrel may be properly branded or marked. Number of hoops

51. The makers of all apple or potato barrels shall brand the initials of their christian name and their whole surname on the outside of each barrel near the top of the stave, under a penalty of twenty-five cents. Barrels to be branded.

52. Any person putting up apples or potatoes for sale in barrels of smaller dimensions than those hereinbefore described, shall forfeit to the purchaser as damages an amount in proportion to any diminution of size or loss Penalty for selling in small barrels.

CHAP. 74. sustained thereby, to be recovered as an ordinary debt, and be liable to a fine of one dollar.

Not to affect flour barrels.

53. Nothing in the last four sections contained shall preclude the use of flour barrels in the shipment of any article of produce.

STAVES AND BRICKS.

Staves, bricks, &c., how counted.

54. All staves, bricks and other articles which are now reckoned by the tale of twelve hundred to the thousand, shall be calculated by the tale of ten hundred to the thousand.

Municipal council to appoint officers.

55. The municipal council may appoint all inspectors and other officers necessary for carrying out the provisions of this Chapter.

## CHAPTER 74.

### OF MILLS AND MILLERS.

Tolls for grinding wheat, &c., regulated.

1. The tolls to be taken by every miller for grinding wheat, rye, barley, buckwheat or indian corn, or for grinding oats which are not kiln dried, shelled and sifted, shall not exceed one sixteenth part, nor the tolls for kiln drying, shelling, grinding and sifting oats one eighth part, of the whole quantity brought to the mill to be ground.

Tolls for hulling barley, bolting flour, &c.

2. Every miller shall receive for hulling barley one sixth of the quantity, and for bolting or sifting flour or meal ground at his mill one pint out of each bushel of grain or corn so ground.

Quantity of grain, how ascertained.

3. The quantity of grain or corn to be ground shall be ascertained by a sealed measure.

Fine for taking or demanding illegal toll.

4. A miller demanding or taking any larger toll than is hereby allowed shall forfeit eight dollars for every such offence, and shall pay the owner the full value of the grain or meal taken beyond the prescribed toll.

Fine for refusing to grind, &c., steam mills.

5. A miller refusing to grind any grain or corn, or to hull any barley which shall be in good order, or to bolt or sift any flour or meal, having the requisite machinery therefor, shall forfeit eight dollars for every offence; but the proprietor or manager of any steam mill may refuse to receive or to grind any grain or corn, or to hull any barley, and shall not be subject to the above penalty therefor, unless he shall first receive and afterwards refuse to grind such grain or corn or to hull such barley.

Millers to keep scales and weights in mills, under penalty of \$20.

6. Every miller shall have in his mill, erected in a convenient place, properly fitted and provided, a good and sufficient beam and scales with proper legal weights for the use of persons requiring grain or corn to be ground at such mill, and in default shall for every such offence forfeit twenty dollars.

## TITLE XV.

### OF LICENSES.

#### CHAPTER 75.

##### OF LICENSES FOR THE SALE OF INTOXICATING LIQUORS.

1. The council of each municipality shall annually appoint as many clerks of the license as they may think fit, and shall define the districts within which they shall exercise their authority, and such clerks of the license shall give bonds to Her Majesty with such sureties and in such penalty as the council may direct for the faithful performance of their duties, and shall be sworn into office; and such officers shall be appointed although no licenses be granted in the municipality. If the person so appointed shall die, refuse to act, remove from the municipality, or from any other cause whatever shall be unable to act, the warden and any three councillors may appoint a suitable person to fill such office, subject to the conditions above mentioned.

Clerks of license,  
appointment of,  
&c.

2. No intoxicating liquors shall be sold in quantities less than ten gallons to be delivered at one and the same time, unless in the original package in which imported, such original package not to mean bottled liquors in quantities less than ten gallons, or by license, under the penalties set forth in section 13 of this Chapter.

Intoxicating  
liquors, how sold  
without license.

3. Licenses for the sale of intoxicating liquors shall only be granted by the council upon the presentation of a petition of two thirds of the rate-payers of the polling district in which the tavern is intended to be established praying for such license; the genuineness of the signatures of such petitioners shall be established to the satisfaction of the council by the oath of a competent person or persons, who shall swear to the *bonâ fide* character of such signatures, and such petition may be rejected in whole or in part by the council. The petition or petitions of the rate-payers of any district or ward for licenses shall be deposited with the clerk of the municipality, or at the office of the town council as the case may be, at least one week previous to the time for authorizing the granting of such license, and all such petitions shall be preserved and shall be open to the inspection of rate-payers during office

Licenses, how  
granted.

CHAP. 75. hours, from the time of deposit to the expiration of the term of the license granted.

Licenses in incorporated towns, how granted.

4. Within any town now incorporated or hereafter to be incorporated no license for the sale of intoxicating liquors shall be granted by the town council except upon the presentation of a petition signed by two thirds of the rate-payers of the ward in which such license is proposed to be granted, praying for the same. The genuineness of the signatures to such petition shall be established by affidavit to the satisfaction of the council. No license shall be granted for a longer period than one year.

Licenses in Halifax City, how granted.

5. Licenses for the sale of intoxicating liquors shall only be granted within the City of Halifax by the city council upon the recommendation of the license committee, concurred in by two thirds of such committee, and accompanied by a petition from a majority of the rate-payers of the licensing district in which the license is proposed to be granted, praying for such license. The genuineness of the signatures of such petitioners shall be established by affidavit to the satisfaction of the city council.

Halifax City divided into licensing districts.

6. Such city council shall have power to divide the wards of the city into licensing districts containing not less than one hundred rate-payers each, and shall each year have prepared from the assessment rolls lists of the rate-payers in each licensing district, which when approved shall be regarded as authoritative lists of the rate-payers in such districts; and until the city council shall define such licensing districts each polling district in the city shall be considered a licensing district.

Application for license in Halifax.

7. In the City of Halifax no application for license shall be entertained by the city council unless the petition for such license be filed with the city clerk, and notice of said application be and remain posted in the office of the city clerk for at least ten days previous, said petition to be open to the inspection of the rate-payers of the city, and no license shall be granted thereon if it be shewn to the satisfaction of the committee on licenses that any signatures to the petition had been forged or illegally obtained.

Clerk of license or J. P. empowered to enter, &c., premises of persons suspected of violating license law.

8. Every clerk of the license or justice of the peace, or any other person acting under the written authority of a clerk of the license or justice of the peace, is hereby empowered to enter into or upon the premises, or into the shop, store, dwelling house or other building of any person who (whether holding a license or unlicensed) is generally reputed and suspected of violating any law respecting the sale of intoxicating liquors, or of violating the license

law, or of selling liquors without license; and any person so suspected shall upon being required by any of such officers or persons so authorized as aforesaid immediately open his said premises and grant free admission to the same; and any person who shall refuse admission to his premises, shop, store, dwelling, house or other building, or who shall not open the same and grant free access thereto, and who shall not permit any of the said officers or persons to so enter, or who shall obstruct any such officer or person in the performance of his duty, shall be liable on conviction to a penalty of twenty dollars for every such offence, to be prosecuted in the name of the Crown or of any person who shall prosecute therefor before any two justices of the peace for the county in which the offence is committed; and in the event of the fine not being paid the party convicted shall be imprisoned in the gaol of the county or municipality in which the offence is committed for a term of not less than twenty days nor more than ninety days. The fine when received shall be paid in to the treasurer of the municipality in which the cause of action originated, towards the general funds of such county or district.

CHAP. 75.

Penalty for obstructing.

9. In any polling district or licensing district in which no licenses are granted, any justice of the peace, upon complaint being made to him by the clerk of license or by any other person, shall issue a warrant for the seizure of liquors found upon the premises of any person who has been previously convicted of violating any of the provisions of this Chapter.

Liquor upon premises of person previously convicted, how seized in certain cases.

10. Five days' notice shall be served upon the owner or occupier of such premises to furnish proof at the trial that such liquors were not kept or intended for illicit sale; and should he fail to substantiate his innocence to the satisfaction of the court, the liquors shall be declared confiscated, and a warrant returnable within thirty days from the date thereof shall be issued, and such liquors shall be destroyed forthwith. After a second conviction, such liquors when so found shall be forthwith seized and destroyed without notice or trial.

Notice to be given to party accused.

Penalty on conviction.

After second conviction.

11. Any person having such liquors so found upon his premises confiscated as aforesaid shall in addition to such confiscation be subject to the penalties prescribed in this Chapter for violating the provisions of such Chapter.

Confiscation to be a cumulative penalty.

12. Any clerk of license or justice of the peace, or any person authorized by a clerk of license or justice, may seize and destroy all intoxicating liquors found exposed or intended for illicit sale within a mile of any mine or mining works, and for that purpose if necessary upon reasonable grounds of suspicion may enter into any house

Liquors found within mile of mining works, to be destroyed.



**CHAP. 75.** or building within a mile of such mine or mining works, and seize, take away or destroy all such intoxicating liquors : and no licenses shall hereafter be granted in any proclaimed gold district or within a mile of any coal, iron or other mine or mining works.

No licenses in gold district, &c.

Penalties.

13. The penalties for violating the law relating to the sale of intoxicating liquors shall hereafter be : for the first offence ten dollars, or imprisonment for twenty days in the county or district gaol, in the event of non-payment of the fine ; for the second offence twenty dollars or forty days' imprisonment ; for the third offence forty dollars or eighty days' imprisonment ; and for every subsequent offence eighty dollars or three months' imprisonment. The first offence shall mean the first time that the accused party shall have been convicted of violating the law relating to the sale of intoxicating liquors, whether upon confession or after trial or by default ; the second, third, fourth and subsequent offences shall in all cases respectively rank in the amount of the fine, after the next previous conviction of the accused party, and every separate sale of any intoxicating liquors to any person or persons, or to the same person at different times on the same day or other days, within six months previous to the date of any summons, shall be a separate violation of the law and punishable by fine or imprisonment ; but only one conviction shall be made by the justice or justices or stipendiary magistrate trying the same under each summons. On the trial of any cause under the provisions of this Chapter or any other Acts relating to the sale of intoxicating liquors, the production of any previous conviction against the party charged shall be sufficient evidence of such previous conviction.

Licenses restricted.

14. No licenses other than tavern or shop licenses shall hereafter be granted ; and no intoxicating liquors shall hereafter be sold in any tavern or other licensed house after the hour of nine o'clock in the evening, except to regular and constant boarders and travellers. No person resident within one mile of such tavern or licensed house shall be considered a traveller within the meaning of this section.

Forms of.

15. Licenses shall be in the form in schedule A.

Duty, how fixed.

16. The councils of the various municipalities and the city council of Halifax shall fix the amount of duty to be paid for each class of license, and the fees to be paid to the clerk of license and clerk of the municipality for issuing the same, and also the commission to be paid to the clerk of license for collecting and paying over such debts,

17. Every person to whom a license shall be granted CHAP. 75. shall, before receiving the same and within fifteen days Duty, when paid. after the meeting of the council granting the same, pay down the whole duties, and shall also enter into a bond Bond. with two sureties in the form in schedule B, which bond shall be prepared by the clerk of the licenses, and when executed shall be filed with the clerk of the municipality.

18. License free of duty, or upon payment of a less Free licenses. duty than that by law imposed, may be granted to persons living on public roads little frequented to encourage them in keeping public houses for the accommodation of travellers.

19. No justice of the peace or coroner shall hold a Justices and coroners prohibited. tavern or shop license.

20. The clerk of the municipality and clerk of the licenses Registry of licenses. shall each register in a book to be kept for that purpose a list of licenses, with the dates of such licenses, the names, additions and residences of the parties so licensed, and a memorandum of the houses or shops for which such licenses were granted, and a statement of the number of bonds taken and of the amount of duties paid; and such books shall be exhibited when required to the municipal council.

21. If any person holding a tavern license shall not, Tavern must have sign. within ten days after obtaining the same, place a sign on the tavern with his name thereon importing that liquors are there to be sold, and that entertainment for man and horse can be there had, he shall forfeit a sum not exceeding Penalty. twenty dollars; and the neglect to do so for every ten days after every conviction shall be deemed a fresh offence.

22. No bar room shall have more than one entrance, Bar room to have only one entrance. which shall open on the public street.

23. The penalties for contravening the next preceding Penalties, &c. section of this Chapter shall be ten dollars for the first offence, twenty dollars for the second, and forty dollars for the third and every subsequent offence. Each week that such contravention continues shall be deemed a separate offence. Such penalties may be recovered by any person suing for the same.

24. Every licensed tavern or shop for retailing intoxicating liquors shall be closed at or before the hour of ten o'clock in the evening. Time of closing tavern or shop.

25. Any person violating the provisions of the preceding Penalty. section shall be liable to a penalty not exceeding twenty dollars.

26. If any person not having a license shall place on any building or in the neighborhood thereof any inscription importing that intoxicating liquors may be had there, he shall forfeit a sum not exceeding twenty dollars; and Penalty for sign when no license.

**CHAP. 75.** every continuation of such inscription for ten days after conviction shall be deemed a fresh offence.

Penalties for not keeping order.

ambling, drinking on Sunday, &c.

Not having accommodation.

Selling liquor on Sunday.

Shop licenae, restrictions of, &c.

Charges for liquors not recoverable if under one gallon.

Exceptions.

Receiving goods from servants or in pawn.

Form of proceeding.

Penalty.

27. If any person holding a tavern license shall not maintain good order on the premises, or if he shall permit raffling or gambling thereon, or shall on Sunday permit persons other than lodgers or persons coming for necessary victualling only to remain about the premises drinking or idly spending their time, or where not holding a general license also shall permit anything other than victuals and drink usually consumed in a tavern to be exposed for sale on the premises, or shall not have reasonable accommodation for travellers and their horses, cattle and conveyances, he shall forfeit his license and a sum not exceeding forty dollars for every offence, in the discretion of the court before which he shall be convicted.

28. If any person holding any license shall sell any intoxicating liquors on Sundays, except in the case of tavern keepers to lodgers on the premises, he shall incur the like forfeiture as mentioned in the last section.

29. No person holding a shop license only shall sell less than one gallon of intoxicating liquors to be delivered at one and the same time, or shall suffer any intoxicating liquors to be drunk on the premises where sold, or any such premises to be opened on Sunday, under the same penalty as that mentioned in the twenty-first section.

30. No person shall recover or be allowed to set off any charge for intoxicating liquors in any quantity less than one gallon delivered at one and the same time; and all specialties, bills, notes, agreements or accounts, stated, given, or made in whole or in part for or to secure any such charge shall be void; but nothing herein contained shall extend to any charge made by a person holding a tavern license only against any boarder or traveller. It shall not be necessary for any person wishing to take advantage of this section to plead the same specially; but advantage may be taken thereof at any stage of the trial on motion for non-suit.

31. If any person holding a tavern license shall purchase from any servant or common laborer any wearing apparel, tools or implements of trade or husbandry, or household goods or furniture made up, or shall receive from any person any goods in pawn, any justice of the peace upon sufficient proof on oath of the fact may issue his warrant for restitution of the property and for payment of the costs, and in default thereof for levy and sale of the offender's goods for double the value of the property and costs, and the offender shall also be liable to a penalty of eight dollars.

32. Married women, servants or other persons concerned CHAP. 75.  
 in any breach of this Chapter shall be liable to the penalty Penalty against  
 thereto attaching as if they were unmarried women or married women,  
 principals, provided the husbands or masters shall not have &c.  
 been prosecuted for the same offence, and upon any Proviso.  
 conviction of a married woman, servant or other person  
 under this section the husband, employer or master shall  
 not be afterwards sued for the same offence.

33. The clerks of the licenses except in the City of Clerk's accounts,  
 Halifax shall render a half yearly account to the municipal when rendered.  
 treasurer of all duties collected, and of all penalties or  
 portions thereof payable into the municipal treasury, which  
 may have come into their hands, together with a statement  
 of all judgments obtained for penalties so far as the same  
 shall have come to their knowledge and which may be  
 unsatisfied, and shall immediately on the receipt of any Duties, penalties,  
 license duties, penalties or portions of penalties pay the same &c., to whom  
 over to the municipal treasurer, deducting the commission. paid.

34. Penalties under this Chapter may be recovered in Penalties, how  
 the name of any of the clerks of license for the municipality recovered.  
 in which the offence shall have been committed, or of any  
 other person who will sue therefor, in the same manner and  
 with the like costs as if they were private debts, except  
 that the summons shall be in the form in schedule C, and Forms.  
 upon conviction such conviction shall be endorsed upon or  
 annexed to the original summons in the form of schedule  
 D, and the same when signed by the justices shall be held a  
 valid conviction, and thereupon an execution for the amount  
 therein mentioned shall issue in the form in schedule F,  
 and upon the trial of any cause under this Chapter either  
 the prosecutor or defendant if he desire it or at the  
 instance and request of the other party may be examined  
 as a witness, provided that when the prosecutor without  
 being called by the other party appears as a witness he  
 shall not retain any part of the penalty, but the whole shall  
 be paid as directed in the next section, and the summons Amendment of  
 may be amended at the trial below or on an appeal, but the summons.  
 clerk of license on information being given to him in Clerk when com-  
 writing on having his costs guaranteed by two or more pelled to prose-  
 responsible parties shall be compelled to prosecute the cute.  
 person informed against under penalty of the same amount  
 as would be imposed upon the party informed against if  
 convicted, to be recovered as an ordinary debt in the name  
 of the person making such request.

35. Penalties under this Chapter except as provided Penalties, dis-  
 in the preceding section shall be paid one half to the posal of.  
 person suing and the other half into the municipal treasury,

**CHAP. 75.** except in the City of Halifax and other incorporated towns, where the same shall be paid to the officer now by law authorized to receive such moneys.

**Appeals, how granted.** 36. Appeals from the decisions of the justices for any penalty or forfeiture incurred under this Chapter shall be granted in the same manner as in the case of summary trials before justices of the peace, and the defendant shall become bound with two sufficient sureties in a sum double the amount of the judgment to prosecute such appeal and to pay all costs, fines and penalties that may be imposed and taxed in the final disposition of the suit, and also that during the pendency of the appeal he will not violate any of the provisions of this Chapter, and in the case of certiorari instead of the bail required in such case the same bond shall be given as in ordinary appeals, and in case of granting a new trial the court may impose such terms on either party as may best promote the ends of justice. No appeal shall be granted unless the party applying therefor make an affidavit that he did not by himself or his agent or clerk sell the liquor contrary to law as charged in the summons.

**Appeal bond.**

**Certiorari, bonds for.**

**New trial.**

**Affidavit for appeal.**

**Affidavit on issue of certiorari.** 37. In no cause instituted for breach of the license law for the sale of intoxicating liquor shall a writ of certiorari issue unless the party applying therefor shall make the same affidavit required in case of appeal, viz.: "That he did not by himself or his agent or clerk with his knowledge or consent sell the liquor contrary to law as charged in the summons."

**Bond, form of.** 38. The bond to be given on such appeal or on issuing a writ of certiorari shall be in the same form as that in schedule E.

**Penalty for non-attendance of witnesses.** 39. If any person subpoenaed as a witness in any suit or prosecution under this Chapter shall not attend at the time and place mentioned in the subpoena, without just cause to be allowed by the court or justices before whom the suit or prosecution shall be had, or having attended shall depart without permission of the court or justices, or shall refuse to be sworn or give evidence on the trial, he shall forfeit a sum not exceeding forty dollars to be sued for and collected as an ordinary debt by the plaintiff, and for want of goods whereupon to levy he may be committed to gaol and detained there for the same period of time as if he had been guilty of a first offence for selling liquors without license; but no person shall be obliged to attend or give evidence on any such trial until he shall have been paid his fees for travel and attendance.

**How levied.**

**Must be paid fees.**

**Prosecutor, how indemnified.** 40. In suits instituted by the clerk of the licenses where the justice before whom the trial is had shall give

judgment for the prosecution, or if he give judgment for the defendant shall certify there was reasonable ground for commencing the suit, the prosecutor shall be fully indemnified for all costs and expenses on both sides, to be taxed by a judge of the Supreme Court, and to be levied by assessment or amercement on the municipality. CHAP. 75.

41. Any person who shall bribe or attempt to bribe, intimidate or attempt to intimidate, a witness with a view to hinder him from giving testimony as to any violation of this Chapter shall be liable to a penalty of not less than twenty dollars. Penalty for interfering with witness.

42. Any justice of the peace who shall purchase intoxicating liquors in any quantity less than ten gallons from a person not holding a tavern license shall forfeit twenty dollars, to be recovered in the name of the Crown or of any person who will prosecute therefor, and shall be liable to forfeit his commission. Penalty on justice.

43. No judgment shall be withheld on account of variance between the proof and the summons, if it appears to the satisfaction of the justices trying the cause that the defendant was aware of the real cause of complaint; but if the justices see fit for this cause they may continue the trial for another day; and no judgment shall be set aside for any variance or for any formal objection. Variance not to affect judgment.

44. Any sale of intoxicating liquors made on the premises of any person by the wife, child or servant of such person shall be considered presumptively as the act of the husband, parent or master, and shall be punished in the same way as if such sale had been made by such husband, parent or master in person, and the burthen of proof of innocence shall be thrown on such husband, parent or master. Justice may continue cause.

45. No mail carrier shall knowingly carry in the same waggon or vehicle with Her Majesty's mails any intoxicating liquors under a penalty of not less than four dollars, nor more than twenty dollars for each offence. Sale by wife, &c.

46. Any person holding a license who shall sell or deliver intoxicating liquor to a minor or to an Indian, upon proof thereof before a justice of the peace shall forfeit his license and shall not again be capable of holding a license, and in case of sale to an Indian shall also be liable to a penalty of twenty dollars for each offence, and in default of payment shall be imprisoned for a term of not less than ten days or more than twenty days. Mail carrier not to carry liquor.

Sale to a minor or Indian.

## CHAP. 75.

47. Whenever in any inn, tavern or other house or place where intoxicating liquors of any kind are sold, whether legally or illegally, any person has drunk to excess of intoxicating liquor of any kind therein furnished to him, and while in a state of intoxication from such drinking has come to his death by suicide or drowning, or perishing from cold or other accident occasioned by such intoxication, the keeper of such inn, tavern or other house or place, and also any other person or persons who for him or in his employ delivered to such person the liquor whereby such intoxication was caused, shall be jointly and severally liable to an action as for personal wrong at the suit of the legal representatives of the deceased person, if such action be brought within three months after such decease but not otherwise, and such legal representatives may bring either a joint and several action against them or a separate action against either or any of them, and by such action or actions may recover such sums not less than one hundred nor more than one thousand dollars in the aggregate of any such actions as may therein be assessed by the court or judge or jury as damages.

Legal representatives of person who has come to his death through intoxication may bring action against person furnishing liquor.

48. If a person in a state of intoxication assaults any person or injures any property, whoever furnished him with the liquor which caused such intoxication, if such furnishing was in violation of law, shall be jointly and severally liable to the same action by the party injured as the person intoxicated may be liable to, and such party injured or his legal representatives may bring either a joint and several action against the person intoxicated and the person or persons who furnished such liquor, or a separate action against either or any of them.

Person furnishing liquor liable for assault committed by person intoxicated thereby.

49. The husband, wife, parent, brother, sister, tutor, guardian or employer of any person who has the habit of drinking intoxicating liquors to excess, or the manager or person in charge of any asylum or hospital or other charitable institution in which such person resides or is kept, or the guardian or curator of any interdicted person, or the parent, brother or sister of the husband or wife of such person, or the tutor or guardian of any child or children of such person, may give notice in writing signed by him or her to any person licensed to sell intoxicating liquor of any kind, or unlicensed, not to deliver intoxicating liquor to the person having such habit, and if the person so notified do at any time within twelve months after such notice, either himself or by his clerk, servant or agent, otherwise than in accordance with the terms of a special requisition for medicinal purposes, signed by a duly qualified medical practitioner, deliver, or in or from any building, booth or

Husband, &c., may give notice not to sell liquor in certain cases.

place occupied by him and wherein or wherefrom any such liquor is sold, suffer to be delivered any such liquor to the person having such habit, the person giving the notice may in an action as for personal wrong (if brought within six months thereafter but not otherwise) recover of the person notified such sum not less than ten dollars nor more than five hundred dollars as may be assessed by the court, judge or jury as damages, and any married woman may bring such action in her own name without authorization by her husband, and all damages recovered by her in that case shall go to her separate use. In case of the death of either party the right of action given by this section shall survive to or against his legal representatives, provided that the identity of the person to whom such liquor is sold be known to the party selling at the time of such sale and delivery.

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50. If the husband, wife, parent, child, brother or sister, master, guardian or creditor of any person addicted to the intemperate use of intoxicating liquors, or any justice of the peace or overseer of the poor residing within the poor district wherein such intemperate person resides, shall give notice in writing to any person engaged in the sale of intoxicating liquors that such person is addicted to the intemperate use of intoxicating liquors, it shall not thereafter be lawful under any pretence whatever for the person receiving such notice by himself, his servants or agents, directly or indirectly, to sell or give any intoxicating liquors to such intemperate person to be used on the premises, or in any quantity less than ten gallons to be delivered and removed from the premises at one time, and any person knowingly violating the provisions of this section, upon proof of the truth of the statement contained in such notice, shall be liable to a fine of not more than twenty dollars for a first offence, and a fine of not less than twenty dollars nor more than forty dollars and imprisonment for a period of not more than thirty days as the court or justices may direct, for a second or subsequent offence.

Penalty for selling to intemperate persons.

51. In any suit instituted for a breach of the provisions of this Chapter it shall not be necessary to state in the summons that the liquor sold was not contained in the original package in which it was imported, or that the same was sold without license, or in quantities less than ten gallons, but the defendant if claiming to be exempted by the operation of such exceptions may set up the same as a defence, in which case the burthen of proof shall be thrown upon such defendant, and it shall not be necessary to attach particulars to the summons as in the case of ordinary civil suits, or to specify the particular kind of

Certain statements unnecessary in summons.

Defence.

No particulars required.



**CHAP. 75.** liquors sold, but in all cases it shall be sufficient in the summons to charge the party accused with having sold intoxicating liquors contrary to law to some person named in the summons.

**Proof of sale to persons not named in summons.** 52. In any such suit in case it shall be alleged in the summons that the sale complained of was made to a person therein named and on the trial the prosecutor shall fail to prove such charge, but proof shall be given of a sale to another person, the suit shall not thereby be defeated, but the justices shall adjudicate upon the offence so proved as if the same had been alleged in the summons, but in such case the defendant upon application shall be entitled to a continuance of not more than eight days to make his defence, and the prosecutor shall not be obliged again to prove his case, although if he choose he may bring additional proof in support of the prosecution as well as proof to rebut the defence.

**Prisoners not entitled to gaol limits.** 53. No person imprisoned under execution issued upon any judgment for a breach of this Chapter shall be entitled to gaol limits.

**Limitation of actions.** 54. Prosecutions for offences against this Chapter, or suits brought on any appeal bond, shall be commenced within six months, and the clerk of the license or any private prosecutor may bring an action on such appeal bond without special leave obtained therefor.

**Action on appeal bond.** 55. In case the constable or officer to whom a summons or subpoena is delivered to be served shall not be able to effect a personal service it shall be a sufficient service of the same to leave it at the dwelling house of the defendant, provided that the officer makes an affidavit that he believes that the defendant concealed himself or in any way endeavored to escape service of such summons or subpoena.

**Service of summons or subpoena, what sufficient.** 56. In any municipality in which licenses for the sale of intoxicating liquors are not granted it shall be the duty of the council for such municipality to appoint for each township one suitable person, who shall be a member in good standing of a temperance organization established in the township for which he shall be appointed, and shall hold office only so long as he shall maintain such standing, to be called Agent for the Sale of Alcoholic Liquors, to keep and sell such alcoholic liquors as may be required for medicinal, mechanical, manufacturing and other purposes not inconsistent with the provisions of this Chapter. Such

**Council shall appoint member of temperance organization to sell liquors.** agent shall keep a list of the names of persons purchasing liquor, the quality and description purchased by each person, and the purpose to which such liquor is intended to be applied, and shall make a return of the same under oath to the council by which he is appointed during each year

**Purpose of sale.**

**To keep list and make return.**

that he shall hold office ; and he shall receive such compensation for his services and shall conform to such regulations for the procuring and selling of such liquors, and shall also be liable to such penalties for neglect or violation of duty, as the council appointing him shall prescribe. No such agent shall have interest in such liquors nor in any profits arising from the sale.

CHAP. 75.

Compensation.  
Regulations.

Penalties.

Shall have no  
interests.

57. It shall be lawful for the chief superintendent of railways or any person authorized by him to seize and destroy all intoxicating liquors found exposed or intended for sale within the limits of the railway, and for that purpose if necessary upon reasonable ground of suspicion forcibly to enter into any house or building within such limits and to seize and take away all such intoxicating liquors.

Railway superin-  
tendent may  
seize liquors on  
railway.

58. No licenses shall be granted to any person who shall reside or have his place of business within the limits of the railway, nor to any person who shall reside or have his occupation within any proclaimed gold district, and all sales of intoxicating liquors within such limits or within such proclaimed gold districts shall be deemed as made without license, notwithstanding the seller may hold a license ; and he shall be liable to all penalties and forfeitures incurred by those who sell without license.

No licenses  
granted within  
railway limits or  
gold districts.

59. In all polling districts in which licenses for the sale of intoxicating liquors are not granted it shall be the duty of the agent for the sale of alcoholic liquors for the township in which such district is situated, in the absence of the clerk of license from his district, to prosecute as agent for such township any person who shall violate any of the provisions of this Chapter, and for that purpose such agent shall have all the powers vested in the clerk of license and shall be indemnified for all costs and expenses in the same manner as the clerk of licenses.

Duty of agent  
for the sale of  
alcoholic liquors  
in absence of  
clerk of license.

60. Any justice of the peace who shall sell intoxicating liquors in violation of this Chapter shall on conviction before two justices of the peace, in addition to the penalties prescribed by this Chapter, forfeit his commission as justice of the peace ; and it shall be the duty of the justices convicting him under a like penalty upon each of them to forward a certificate of such conviction, signed by each of them, to the Provincial Secretary ; and the Government shall revoke and annul his commission.

Punishment of  
J. P. selling  
liquor in viola-  
tion of Chapter.

61. No person shall open or keep open any booth, shop, tent or place for the sale of, or shall in any way expose for sale or sell, any spirituous liquors, wine, ale, porter, cider or other intoxicating beverage within or within three miles of the grounds occupied by any of the

Intoxicating li-  
quors not to be  
sold within three  
miles of camp  
meetings.

**CHAP. 75.** gatherings or assemblies of persons for devotional and other religious exercises called and known by the name of camp meetings, under a penalty of fifty dollars for each offence, which penalty shall be recoverable as a private debt by and in the name of any person who will sue therefor before any two justices of the peace.

Penalty.

Arrest and commitment of offenders.

62. Any person violating the provisions of the preceding section may be arrested on view by any peace officer and taken before a justice of the peace, who upon the oath of such peace officer may commit the offender by warrant under his hand to the common gaol of the county or district unless he confess the offence and pay the penalty or give security for his appearance to take his trial at a time named by such justice before any two justices as aforesaid.

Two preceding sections not to affect hotels, &c.

63. The two preceding sections shall not extend to or affect any regularly established or duly licensed hotel, tavern or refreshment saloon, existing before the commencement of such camp meetings.

What sufficient proof of license.

64. The record in the office of the clerk of license shall be sufficient proof of the holding of a license by any person charged with violating any of the provisions of the license laws.

Chapter not to apply to City of Halifax.

65. Nothing in this Chapter contained shall apply to the City of Halifax except where specially mentioned.

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## SCHEDULES.

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### A.

Municipality of \_\_\_\_\_.

License Office.

Tavern License.

License is hereby granted to \_\_\_\_\_, of \_\_\_\_\_, in the County of \_\_\_\_\_, to sell and retail in a tavern, to be kept in the house in which he dwells, situate [*here describe particularly the situation of the premises,*] intoxicating liquors conformably to law.

This license to remain in force until \_\_\_\_\_ day of \_\_\_\_\_ next, subject to forfeiture for breach of the law.

Given under my hand as Clerk of the Licenses for the said municipality this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

A. B., Clerk of the License.

By order of the municipal council, security having been given as required by law.

Municipality of -----.

CHAP. 75.

License Office.

Shop License.

License is hereby granted to -----, of -----, in the County of -----, to sell in a shop to be kept in the building occupied by him, situate [*here describe particularly the situation of the premises,*] intoxicating liquors in quantities not less than one gallon, no part whereof shall be consumed on the premises.

This license to remain in force until the ----- day of -----, subject to forfeiture for breach of the law.

Given under my hand as Clerk of the Licenses for the said municipality this ----- day of -----, A. D. 18--.

A. B., Clerk of the Licenses.

By order of the municipal council, security having been given according to law.

B.

Know all men by these presents that we, -----, are held and firmly bound unto our Sovereign Lady Queen Victoria, her heirs and successors, in the sum of two hundred dollars of lawful money of Nova Scotia, to which payment we jointly and severally bind ourselves, our heirs, executors and administrators, by these presents, sealed with our seals, and dated the ----- day of -----, A. D. 18--.

Whereas the above bounden ----- has been granted a license for the sale by retail of intoxicating liquors in the tavern [*or in the shop*] kept by the said -----, in -----, Now the condition of this obligation is such that if the said ----- shall in all respects conform to the laws in force respecting the retail of intoxicating liquors and connected with such license, then this obligation to be void, otherwise to remain in full force and effect.

Signed, sealed and delivered }  
in the presence of ----- } (Seals.)

C.

To any of the Constables in the County of ----- :

You are hereby commanded to summon A. B., of -----, in the County of -----, to appear before us at -----, at ----- o'clock in the ----- noon of the ----- day of -----, A. D. 18--, to answer to the suit of C. D., Clerk of the License for the County of -----, [*if the suit be brought in his name, or as the case may be*] for selling intoxicating

CHAP. 75. liquors within ——— previous to the issuing hereof, contrary to law.

Witness our hands and seals at ———, the ——— day of ———, A. D. 18—.

E. F., J. P. (Seal.)

G. H., J. P. (Seal.)

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D.

The within named defendant having been duly summoned as mentioned in the annexed writ of summons, was this day convicted of the offence of violating the license laws by selling intoxicating liquors without license. [*or other offence as the case may be, specifying whether it is for the first, second, third or fourth offence, and stating the amount of penalty and costs, or upon default, or upon the oath of G. H., as the case may be, stating the manner of the party's conviction, and the names of the witnesses who may have been examined.*]

Witness our hands this ——— day of ———, A. D. 18—.

C. D., J. P.

E. F., J. P.

---

E.

Know all men by these presents that we, ——— and ———, are held and firmly bound unto Her Majesty Queen Victoria, her heirs and successors, in the sum of ——— of lawful money of Nova Scotia, to which payment we jointly and severally bind ourselves, our heirs, executors and administrators, by these presents, sealed with our seals, and dated the ——— day of ———, A. D. 18—.

The condition of the foregoing obligation is such that if the above bounden [*party convicted*] shall prosecute an appeal from a judgment given against him for a violation of the license laws by ———, a Justice [*or Justices*] of the Peace for the County of ———, on the ——— day of ———, and shall pay all fines, penalties and costs that may be awarded against him upon the final disposition of such suit, and also if the said ——— shall not during the pendency of such appeal violate any provisions of the laws respecting licenses for the sale of intoxicating liquors, then this obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed and delivered }  
 in the presence of ———. } (Seals.)

## F.

CHAP. 75.

To any of the Constables for the County of \_\_\_\_\_ :

Whereas A. B., of \_\_\_\_\_ was this day convicted before us, the undersigned, two of Her Majesty's Justices of the Peace for the County of \_\_\_\_\_, of the offence of violating the license laws, [*here state the offence as in the conviction*] these are therefore to command and require you forthwith to levy on the goods and chattels of the said A. B., to be found within your precinct, the sum of \_\_\_\_\_ dollars for penalty and \_\_\_\_\_ dollars for costs of suit, together with constable's fees; and for want of goods and chattels of the said A. B., we command you that you take the body of the said A. B. and him commit unto our jail in \_\_\_\_\_, there to remain until discharged by due course of law. Whereof fail not, and make due return of this writ with your doings thereon to us within \_\_\_\_\_ days.

Witness our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_  
A. D. 18—.

E. F. (Seal.)

G. H. (Seal.)

CHAP. 76.

TITLE XVI.

OF CERTAIN BIRDS AND ANIMALS.

CHAPTER 76.

OF THE PRESERVATION OF USEFUL BIRDS AND ANIMALS.

Close season for moose and caribou.

1. Hereafter no person shall kill or pursue with intent to kill any moose or caribou except from the 15th day of September until the 31st day of January, both inclusive, in any year; nor shall any person expose for sale or have in his possession any green moose or caribou skin, or fresh moose or caribou meat, or any part of the carcass of a moose or caribou killed in this Province, except in the months aforesaid and the first five days of February in any year. The possession of any green moose or caribou skin, or meat, or any part of the carcass of a moose or caribou during the close season shall be presumptive evidence of such moose or caribou having been illegally killed or taken.

Moose and caribou, how many one person may kill. Hunting party to carry out flesh.

2. No one person shall during any one year or season kill or take more than two moose and four caribou.

3. Any person or party of huntsmen who may kill a moose or caribou shall carry the flesh thereof out of the woods within ten days after killing the animal, provided that moose or caribou killed during the latter part of January shall be carried out not later than the fifth day of February in the same year.

Penalty for violating preceding sections.

4. Any person violating any of the foregoing sections of this Chapter shall be liable to a penalty of not less than thirty nor more than fifty dollars for each offence, provided however that any person convicted of having in possession or exposing for sale the carcass or any part of the carcass of a moose or caribou, for the killing or taking of which a fine shall have been already inflicted and paid, shall be fined on conviction not more than twenty nor less than ten dollars for each such offence.

Forfeited meat to be for use of poor.

5. It shall be the duty of the prosecutor, commissioner or warden, or in the absence of every such person, of the magistrate or magistrates before whom the prosecution takes place, to send moose or caribou meat when seized and forfeited under the provisions of this Chapter to the overseers of the poor for the district within which the

offence has been committed for the use of the poor, such overseers defraying the expense of transportation. If the place in which such meat is situate be too remote from the overseers of the poor for the district for the meat to be transported without too great expense, then the same shall be distributed among the poor of the immediate neighborhood in quantities of not more than twenty pounds to any one family or individual not a member of a family, by such commissioner, warden, prosecutor or magistrate or magistrates. If such meat cannot be conveniently sent or distributed as provided by this section, then it shall be the duty of all or any of such officers to destroy the same, under a penalty of twenty dollars for each omission or neglect to do so. The skin and horns shall be forfeited and shall be branded or marked by such officers under a like penalty; and the same shall be forwarded to the Game and Inland Fishery Protection Society of Nova Scotia, or their agents, to be disposed of as they may think fit.

6. Whenever any person shall make affidavit before a stipendiary magistrate or justice of the peace, in the form in the schedule hereto marked A, that he has reasonable cause to suspect and does suspect that moose or caribou skin or horns, or any portion of the carcass of a moose or caribou, or any of the animals or birds included in the term "game" in this Chapter, or any part of such animals or birds, or the skin of any fur-bearing animal included in the term "game," which have been killed during the close season or otherwise contrary to the laws relating to the preservation of useful birds and animals, is or are concealed in or upon the property or the premises of any person or persons, such stipendiary magistrate or justice of the peace may cause a search warrant to be issued in the form in the schedule hereto marked B, commanding the person to whom it is directed to search such suspected premises or property and to seize and take away any such skin or horns or any portion of the carcass of a moose or caribou found therein, or any such game or parts thereof, or the skin of any fur-bearing animal included in the term "game," and the same, if the party is convicted before a justice or justices of the peace or stipendiary magistrate of the offence of killing or taking the same or any part thereof in the close season or otherwise contrary to the laws relating to the preservation of useful birds and animals, shall forthwith be forfeited, and shall be disposed of as provided in section five of this Chapter with relation to moose or caribou meat and the skin and horns thereof. And if any party in a case where no such warrant shall

CHAP. 76.

Proceedings to discover and forfeit "game" killed during close season.



CHAP. 76. have been issued shall be convicted before any justice or justices of the peace or stipendiary magistrate of having killed any moose or caribou, or any of the birds or animals included in the term "game," or fur-bearing animal included in the term "game," in the close season or otherwise contrary to the laws relating to the preservation of useful birds and animals, the meat or skin or horns thereof and all such "game" shall forthwith be forfeited and disposed of as provided in said section five.

No snares or traps for moose or caribou.

7. No person shall set or attempt to set any snare, or trap, or pit, for the destruction of moose or caribou, under a penalty of not less than twenty-five nor more than fifty dollars for each offence, and any person finding any such snare or trap may destroy the same. The possession of any such snare or trap shall be presumptive evidence of the attempt of the person in whose possession it is found to set the same for the destruction of moose or caribou.

Penalty for hunting moose or caribou with dogs.

8. Any person who shall hereafter hunt, or chase, or kill, or pursue with intent to kill, any moose or caribou with dogs shall be liable to a fine of twenty-five dollars in addition to any penalties to which he may be otherwise liable under this Chapter.

#### BEAVERS, HARES, ETC.

Close season for beavers.

9. No person shall kill or pursue with intent to kill or set or maintain any trap for any beaver, or shall expose for sale or have in his possession any beaver skin or other part of any beaver killed in this Province, save in the months of November, December, January, February and March in any year under a penalty of not less than ten nor more than fifteen dollars for each offence, to be recovered and applied in the manner prescribed by the twenty-first section.

Close season for hares and rabbits

10. No person shall kill or pursue with intent to kill any hares or rabbits, or shall expose for sale or have in his possession any hares or rabbits, between the first days of March and October in any year. No snares shall be set for hares or rabbits during such period, and all snares shall be taken up during the same. The making, placing, erecting or maintaining any hedge or other obstruction or structure of a greater length in the whole than fifty feet in connection with or adjoining or between any snare or snares, or the making, placing, erecting or maintaining any such hedge or other obstruction or structure without a clear space of at least one hundred feet intervening between it and any other, shall also be a violation of this section, and any snare, hedge or other obstruction or structure set, made, placed, erected or maintained contrary to this section

may be destroyed by any person finding the same. Any person violating this section shall be liable to a penalty of five dollars for each offence. The possession of any hare or rabbit after the fifth day of March shall be presumptive evidence of the same having been illegally killed or taken. CHAP. 76.

11. No person shall take or kill, or pursue with intent to kill, or have in his possession, or set, or maintain any snare or trap for the otter or the mink, between the first day of May and the first day of November in any year, and no person shall take, or kill, or pursue with intent as aforesaid any other animal valuable only for its fur, except the bear, the wolf, the loup cervier, the wild cat, skunk, raccoon, woodchuck, and musquash, and the fox, between the first day of April and the first day of November in any year. The penalty for each offence against this section shall be five dollars. Close season for otters and minks.

12. Any person may catch alive at any season of the year any number of minks in any box, trap or modification of the same for the purpose of breeding and preserving the same. Hereafter minks when caught and kept under the authority of this section shall be considered personal property of a private nature. Minks may be caught for breeding purposes.

PROVISIONS RESPECTING BIRDS.

13. No person shall take or kill, or attempt to take or kill, any grouse or partridge between the first days of January and September in any year, or shall sell, buy, or have in his possession any grouse or partridge so taken between such last mentioned days, both inclusive; and no person shall take or kill, or attempt to take or kill, or have in his possession any woodcock, snipe or teal between the first days of March and August in any year. It shall not be lawful to take or kill, or have in possession, any blue winged duck during the months of April, May, June and July in any year. The possession of any such bird during the close season prescribed in this section in respect of such bird shall be presumptive evidence of such bird having been illegally killed or taken. No person shall kill any woodcock before sunrise or after sunset. Close season for grouse, partridge, &c.

14. The killing, taking, or having as aforesaid each partridge, grouse, woodcock, snipe, blue winged duck, or teal, shall be deemed to constitute a separate offence; and any person violating the next preceding section shall be liable to a penalty of not less than five nor more than ten dollars for each offence, and an additional penalty of one dollar for each bird so taken or killed after or in addition to the first bird. Penalties for violating preceding section.

## CHAP. 76.

15. It shall not be lawful for any person to take or kill within this Province any pheasant, or to buy, sell or have in his possession any dead pheasant that has been so taken or killed, under a penalty of two dollars for each offence.

Dead pheasants, presumptive evidence.

16. Any dead pheasant found in the possession of any person within this Province, shall be presumed to have been taken or killed by such person contrary to this Chapter, until proof to the contrary be given by such person.

Killing of robins and small birds prohibited.

17. The killing of robins, swallows, sparrows and other small birds, and birds of song, which frequent the fields and gardens, and the selling and offering for sale and the having in possession such birds when killed, shall hereafter be unlawful.

Not to apply to birds killed for scientific purposes.

18. This Chapter shall not apply to birds killed for preservation as specimens of natural history; and any game mentioned in this Chapter may be killed at any time for purposes of scientific investigation, a special license setting forth the particular purpose of the enquiry, and signed by the Provincial Secretary or his deputy, having been first obtained for that purpose from the Provincial Secretary's office.

Trapping, &c., of birds in section 17 unlawful.

19. The trapping, snaring or otherwise taking alive or exposing for sale alive of any of the birds mentioned in the seventeenth section, and the destroying of the nests or eggs of such birds, shall hereafter be unlawful; and any such traps or snares when found may be destroyed, and any such bird if alive shall be set free.

Penalties for violating sections 17 and 19.

20. Any person offending against the seventeenth or nineteenth section shall for each offence forfeit one dollar, in addition to ten cents for each bird, to be recovered and appropriated in the manner prescribed by the twenty-first section.

## PENALTIES.

Recovery of penalties provided for; and disposal of.

21. All penalties imposed by this Chapter shall be enforced by summary conviction before a justice of the peace, and when recovered shall be paid one half to the informer and the other half to the commissioner or warden if prosecuting; but if the prosecutor be any other person than a commissioner or warden, then such other or second half shall be paid by the magistrate or justices or justice trying the case within fifteen days after the recovery thereof to the treasurer of the Game and Inland Fishery Protection Society of Nova Scotia, to be applied to the objects of such society.

22. It shall be the duty of all justices of the peace, stipendiary magistrates, constables, policemen and market clerks to enforce the provisions of this Chapter, and of any other enactment for the preservation of useful birds and animals, whenever the infringement thereof comes under their notice, under a penalty of not less than ten dollars for each omission of duty. CHAP. 76.  
Duty of magistrates, &c., prescribed.

23. In any case where no penalty is or shall be provided for any offence against this Chapter or any other enactment for the preservation of useful birds and animals, the penalty shall be not less than five nor more than twenty dollars, to be recovered before a stipendiary magistrate or one justice of the peace, subject to all the provisions of the twenty-first section. Provision where no penalty is provided.

## MISCELLANEOUS PROVISIONS.

24. There shall continue to be a chief game commissioner for the Province (appointed by the Governor-in-Council), who shall be sworn to the faithful performance of his duty, and whose duty it shall be to supervise and instruct the district commissioners and the wardens in the discharge of their duties, to assist as far as practicable in the prosecution of offenders, and generally to see that the provisions of the laws for the preservation of useful birds and animals are carried out; and it shall be lawful for any person to destroy or kill any dogs found hunting, pursuing or chasing any moose or caribou. Chief game commissioner.

25. There shall continue to be for each district heretofore set apart or hereafter to be set apart for the purpose by the Governor-in-Council a commissioner appointed by the Governor-in-Council, who shall make oath for the proper discharge of his duties, and whose duty it shall be to see that the provisions of the law are carried out, and particularly to prosecute all persons offending against it in regard to the preservation of game. It shall also be his duty to assist the officers of the Government of the Dominion of Canada as far as possible in carrying out the laws for the preservation of the inland fisheries of the Province. Such commissioner shall have power to appoint in writing wardens or deputies under him to assist him in the discharge of his duties. District game commissioners.

26. No person not having his domicile in the Province of Nova Scotia shall be allowed to kill or pursue with intent to kill any of the animals or birds included in the term game as defined in this Chapter at any time of the year without having first obtained a license for the purpose, signed by the Provincial Secretary and chief game commissioner, from the clerk of the municipality in the district Licenses for non-domiciled persons.

CHAP. 76. where the same is to be used and have effect, or from the office of the Provincial Secretary at Halifax, and the person issuing such license shall endorse upon such license the date of delivery and number of the district in which the same is so delivered and is to be used, and sign such endorsement with his name and office in full; and shall inform the game commissioner for such district where the same is so delivered and to be used of the issue of each and every such license, and such commissioner shall notify his wardens of the fact of such issuing as soon after as possible, under a penalty for omission so to do of ten dollars, to be recovered in the same manner and by the same process as any fine imposed by this Chapter. Every such license shall be in force for one year, from the first day of August or from the day of its delivery as aforesaid till the first day of August next ensuing, and shall be subject to the provisions of this Chapter and of any other enactment for the preservation of useful birds and animals in force in the Province during the time for which such license is granted. The fee to be paid therefor, in the County of Halifax into the Provincial Secretary's office, and in incorporated counties to the clerk of the municipality, shall be thirty dollars for moose and game, and the fee for shooting the birds mentioned in this Chapter ten dollars, and the fund derived from this source shall be applied as hereinafter mentioned.

Penalty for violating preceding section, and application of license fee.

27. Any person violating the next preceding section shall be liable to a penalty of not less than twenty nor more than fifty dollars for each offence in addition to the license fee and costs of prosecution, to be recovered in the manner prescribed by the twenty-first section of this Chapter, and when recovered the license fee to be paid if issued in the County of Halifax into the Provincial Secretary's office, if issued in the other counties to the clerks of the municipalities, one half of the fine to be paid to the informer and the other half to be paid in the County of Halifax into the Provincial Secretary's office; and in the other counties to the clerks of the municipalities, to be applied as follows:

(*a.*) The clerk of the municipality shall retain for his services five per centum of the amount recovered or collected by him.

(*b.*) The clerk of the municipality shall forward to the Provincial Secretary's office the total balance of moneys received for licenses and fines so collected if any, together with an annual return shewing the number of licenses issued by him if any, and the amount of fines collected or paid into his hands; such return to be made on or before

the thirty-first day of January in each and every year under a penalty for each omission so to do of ten dollars, to be recovered as hereinbefore provided for penalties under this Chapter. CHAP. 76.

(c.) Eighty per centum of the amount received in the Provincial Secretary's office for the licenses and fines to be divided equally between the commissioners and wardens of the district in which such licenses may be issued.

(d.) Fifteen per centum to be held by the Provincial Secretary to be applied towards the expenses incurred in carrying out the provisions of this Chapter and of any other enactment for the preservation of game. Should any one holding a license to hunt, issued or to be used in one district, not kill the number of animals allowed by law to be killed or taken by one person in one season, he shall on going to another district make affidavit before the clerk of the municipality that he is yet entitled to kill or take one or more animals; and the said clerk of the municipality shall thereupon endorse upon the license presented to him or annex thereto a statement of the number of animals sworn to, without charge; and any person holding a license issued or to be used in one district and hunting in another without such endorsement shall be held to have hunted without license and be liable to the penalties herein imposed as if he had not had a license to hunt. The money payable under subsection (c) of this section to commissioners and wardens shall be paid under a warrant signed by the commissioner of the district and countersigned by the chief game commissioner.

28. The provisions of the two preceding sections shall apply to officers in Her Majesty's service and officers of the army and navy on service in this garrison and station, except that the fee to be paid for such license shall be the sum of five dollars, to be paid and appropriated as in the said section is provided. Officers in Her Majesty's service, officers of the army and navy in this garrison and station, being members of the Game and Inland Fishery Protection Society of Nova Scotia, shall be exempt from all liability to take out a license and the payment of any license fee, so long as they shall be members of such society by the payment thereto of the required annual subscription. License fee payable by officers in H. M. service.

29. Every holder of a license granted under the provisions of this Chapter must produce the same when required so to do by any justice of the peace, game commissioner or warden, or officer of the Game and Inland Fishery Protection Society. License to be produced when required.

30. In the absence of any provision to the contrary, and if the context does not preclude such construction, the Definition of terms.

CHAP. 76. following terms shall in this Chapter and in any other enactment for the preservation of useful birds and animals have respectively the following meanings :—“ Game ” shall mean and include moose, caribou, beaver, hares, rabbits, otters, minks and animals valuable only for their fur, (except bears, wolves, loupceviers, wildcats, musquash and foxes,) grouse, partridges, woodcock, snipe, blue winged duck, and teal. “ Close season ” shall for each kind or species of game mean the season during which the killing, pursuing with intent to kill, taking or having in possession the same is forbidden. “ Each offence ” shall mean the killing or pursuing with intent to kill, or taking or having in possession one animal or bird, or other object, or the doing once any act mentioned or forbidden.

Export of moose  
or caribou hides  
prohibited.

31. The export from this Province of moose or caribou hides is hereby prohibited and unlawful, and the hides attempted to be exported shall be forfeited, and the owner or person attempting to export the same shall on conviction be liable to pay a sum not to exceed five dollars on each hide, to be recovered in the name of any prosecutor in a summary manner before two justices of the peace, and when recovered to go to the prosecutor.

Hides about to  
be exported may  
be seized by J.P.,  
&c.

32. Any justice of the peace, constable or revenue officer may seize hides attempted to be exported under section thirty-one, and it shall be the duty of a justice of the peace on information on oath before him to issue a warrant addressed to any constable or peace officer to seize and secure hides so attempted to be exported, and if the same are not claimed and proved to the satisfaction of the justice issuing the warrant not to be liable to forfeiture within ten days after the seizure they shall be sold at public auction.

If not claimed,  
&c., to be sold.

Appeal to the  
County Court.

33. If the claimant be dissatisfied with the decision of the justice he may appeal to the County Court, and the appeal shall be heard and determined in a summary way by any of the judges of such court.

Bond.

34. The party appealing shall give a bond with sufficient sureties in a penalty of fifteen dollars for every skin so seized as aforesaid, conditioned for the performance of the judgment of the court of appeal.

Proceeds of sale.

35. The proceeds of the sale under section thirty-two shall after deducting the expenses of the sale and justice's fees be paid to the informant or officer who seized the hides.

Prosecutions,  
when to be be-  
gun.

36. All prosecutions under this Chapter must be begun within one year from the date of the offence and not after.

Moneys deriv-  
able under Chap-  
ter, how applied.

37. All moneys derivable from the sale of licenses under the laws for the preservation of useful birds and animals, and all moneys hereafter paid into the office of

the Provincial Secretary from the same source or under CHAP. 76. any of the provisions of this Chapter, shall except as herein otherwise provided be paid out from time to time as occasion may require for the purpose of effectually carrying out the provisions of this Chapter or any Act for the preservation of useful birds and animals, such moneys to be so paid out when required for the purposes aforesaid upon the order of the president of the Game and Inland Fishery Protection Society, which said order shall be countersigned by the chief game commissioner and concurred in by the Provincial Secretary.

SCHEDULES.

[Form A.]

The information of \_\_\_\_\_, of the County of \_\_\_\_\_, in the Province of Nova Scotia, (yeoman,) who saith that he hath reason to suspect and doth suspect that *(insert it whether meat, skin, horns, or birds, or parts thereof)* was (or were) *(describe the offence as "killed in close season" or "killed by dogs")* in the County of \_\_\_\_\_, *(by some person or persons unknown, or name the person,)* and are concealed in or upon the premises or property of \_\_\_\_\_, in the County of \_\_\_\_\_.

*(Here insert the cause of such suspicion.)*

Wherefore he prays that a search warrant may be granted to search such premises or property for the same.

Sworn (or affirmed) before me, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—, at \_\_\_\_\_, in the County of \_\_\_\_\_.

W. S., J. P.

[Form B.]

SEARCH WARRANT.

CANADA, }  
County of \_\_\_\_\_.

To all or any of the Constables of \_\_\_\_\_, in the County of \_\_\_\_\_.

Whereas, \_\_\_\_\_, of \_\_\_\_\_, in the County of \_\_\_\_\_, has this day made oath before me, the undersigned, that he hath reason to suspect and does suspect that *(describe it whether meat, skins, horns, or birds, or parts*



CHAP. 76. *thereof,)* was (or were) (*describe the offence as "killed in close season" or "killed by dogs"*) in the County of \_\_\_\_\_, (*by some person or persons unknown, or naming the person or persons,)* and are concealed in or upon the premises or the property of \_\_\_\_\_, in the County of \_\_\_\_\_.

These are therefore to require you, in Her Majesty's name, with proper assistance, diligently to search such property or premises in the day time for the said (*describe it whether meat, skins, horns, or birds, or parts thereof,)* and if you shall find the same, or any part thereof, you bring the same before me or some other justice of the peace or stipendiary magistrate, to be dealt with according to law.

Given under my hand and seal, at \_\_\_\_\_, in the County of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

W. S., J. P.

## TITLE XVII.

## OF IMMIGRATION.

## CHAPTER 77.

## OF IMMIGRANTS.

1. The Governor has power to appoint an Immigrant Agent as occasion may require. The salary of the Immigrant Agent shall not exceed eight hundred dollars. He is empowered and his duties shall be to correspond with the Secretary of the Board of Land and Emigration in London and with the agents appointed by that board, with the officers of any association, or with public spirited persons desirous of promoting emigration to the colonies, and to furnish from time to time such information as may be useful to enable them to send out emigrants for whom there is likely to be suitable employment in this Province.

To open a book in which persons wishing to engage mechanics, laborers and apprentices can enter their names and addresses. To open books.

To correspond with municipal officers, and keep a registry of the distribution of immigrants sent into the interior. To correspond and keep registry

To act as the guardian of immigrant orphan children, to bind them as apprentices, and to protect them in case of necessity. To act as guardian of orphans.

To render accounts quarterly to the Provincial Secretary, and to make an annual report of his proceedings for the information of the Government and the Legislature. To render accounts quarterly, and report annually.

To act under such instructions as may be issued by the Governor-in-Council from time to time. To act under instructions.

2. The Governor-in-Council may authorize the Immigrant Agent to draw from the treasury such sums as may be necessary to temporarily provide for and distribute such immigrants as may be sent into this Province. Governor may authorize to draw.

3. Wherever there are tracts of land suitable for settlement it shall be lawful for the Commissioner of Crown Lands when so instructed by the Governor-in-Council to lay them off in one hundred acre lots, with convenient roads running through them, and to place them at the disposal of the Immigrant Agent for actual settlement as hereinafter directed. Commissioner of Crown Lands to lay off lands and place them at disposal of Agent

- CHAP. 77.** 4. Whenever such lands are required by industrious immigrants arriving in this Province for actual settlement, surveys, and time for payment allowed. surveys shall be made and the applicants put into possession and allowed a credit of three years for the purchase money, which, or such portion as under the circumstances the Governor shall think fit to direct, shall be expended under such instructions as the Commissioner of Crown Lands with the approval of the Governor shall appoint, in opening such roads as may be required for the formation and improvement of the settlement.
- Purchase money expended on roads. 5. The Commissioner of Crown Lands shall furnish the Immigrant Agent with plans shewing the district ordered by Government to be set apart for settlers, with its subdivisions and roads; a corresponding plan shall be kept in the crown land office.
- Agent to be furnished with plans, &c. 6. The agent shall receive applications for land for immigrants and shall refer the same to the Commissioner of Crown Lands, who shall have the requisite lots surveyed and the usual entries and report made and decisions of the Executive Council obtained. The decision shall be communicated to the Immigrant Agent with proper plans.
- Agent to receive applications for Crown Lands and refer to Commissioner. 7. A license of occupation with suitable conditions in a form to be approved by the Governor-in-Council shall be executed and given by the Immigrant Agent to the immigrant settler. The immigrant shall not take possession until his license of occupation has been issued and delivered to him; and previously or as soon after as possible the lines of the lot shall be run out, blazed and cornered under the direction of the Commissioner of Crown Lands.
- License of occupation. 8. Before delivery of the license of occupation a bond and warrant shall be taken from the immigrant settler for the purchase money, payable in three years with interest, half in two years from date, the residue in three years, upon which bond credit shall be allowed for work performed on roads in conformity with the instructions.
- When to take possession. 9. Upon the expiration, of three years if the terms shall then be complied with and the purchase money paid or satisfied, or at an earlier period if the money shall be sooner paid, the settler shall be entitled to apply to the Commissioner of Crown Lands for a grant on the certificate of the Agent.
- Purchase money, how secured. 10. The license of occupation or the possession of the immigrant settler or his improvements shall not be transferable or extendable under execution except on the license of the Immigrant Agent under his hand, and any attempted transfer by act of the party or under execution shall not convey any title or right except with such license; but on the death of the immigrant settler his inchoate rights shall
- When issued. grant
- License of occupation not transferable.

descend as personal property subject to the unperformed CHAP. 77. conditions.

11. If at the expiration of three years the purchase money shall not be paid in money or in work on roads to the satisfaction of the Immigrant Agent, or if within the three years the property shall be abandoned and left derelict, it shall be lawful for the Immigrant Agent, with the sanction of the Governor-in-Council previously obtained, and after a printed notice posted on the court house and on two other public places in the county where the lands lie, that the said lands and all rights of the immigrant therein shall be forfeited unless cause to the contrary be shewn at a place and time therein mentioned, not being less than one month thereafter, to declare in writing under his hand the forfeiture of the lot, and the possession of the lot shall thereupon revert to and be reinvested in the Crown as if inquest of office had been formally found in favor of the Crown; and any person in possession and refusing or neglecting after notice from the Immigrant Agent to remove shall be subject to be proceeded against and evicted under the Chapter, "Of Forcible Entry and Detainer."

Forfeiture of license.

Mode of proceeding.

12. The Immigrant Agent shall record in books kept for the purpose all licenses of occupation issued by him, and open an account with each immigrant settler, and shall in the first week in January in each year make full returns to the Commissioner of Crown Lands of all licenses of occupation issued by him.

Licenses recorded.

Returns.

13. The Governor-in-Council may make regulations for carrying into effect this Chapter, which, as far as shall not be inconsistent with the provisions of this Chapter or of law, shall have the same force as if herein enacted.

Governor-in-Council may make regulations

14. Nothing herein shall be construed to contravene or conflict with any legislation of the Parliament of Canada on the subject of immigration.

Not to conflict with Dominion legislation.

CHAP. 78.

## TITLE XVIII.

## OF CORPORATIONS AND PARTNERSHIPS.

## CHAPTER 78.

## OF GENERAL PROVISIONS RESPECTING CORPORATIONS.

Corporations;  
their powers and  
privileges.

1. All corporations shall where no other provision is specially made be capable in their corporate name to sue and be sued, to prosecute and defend actions, to have a common seal which they may alter at pleasure, to elect in such manner as they may deem proper all necessary officers, and to fix their compensation and to define their duties, and to make by-laws and regulations not contrary to law nor repugnant to the charter or Act by which any such corporation may be created, for their own government and the due management of their affairs.

By-laws, and pro-  
ceedings to be  
regulated there-  
by.

2. All corporations may by their by-laws, where no other provision is specially made, determine the manner of calling and conducting meetings, the number of members which shall constitute a quorum, the number of shares which shall entitle the members to one or more votes, the mode of voting by proxy, the mode of selling shares for the non-payment of instalments and of transferring shares generally, the tenure of office of the several officers, and the purchase, conveyance and sale of their real and personal estate; and they may annex penalties to their by-laws not exceeding in any case the sum of twenty dollars for any one offence.

By-laws, list of  
shareholders,  
when, to be regis-  
tered.

3. When any charter or act of incorporation shall direct that the by-laws and list of shareholders, or either of them, shall be registered, no by-law of the incorporation shall be in force until a copy thereof, and also, if required by the charter or act of incorporation, a list of the names of all the members of the corporation, with the amount of the stock held by each member respectively, certified under the hands of the president and secretary, or, if the company shall not have been organized, under the hands of three at least of the members of the company, of whom one at least shall have been named in the charter or act of incorporation, shall be recorded in the office of the registrar of deeds in such county as may be directed by such act or charter; and no subsequent by-law, nor any subscription

of additional stock, nor the transfer of any stock or shares in the corporation, except by devise or by descent or other act of law, shall be effectual, until a certificate thereof under the hands of the president and secretary shall be recorded in the same office; and in all cases by-laws relating to the real estate of the corporation shall before they become effectual be recorded in manner above mentioned in the office of the registrar of deeds for the county or district in which such real estate may be situate. CHAP. 78.

4. The first meeting of every corporation shall unless otherwise provided in the charter or act of incorporation be called by notice signed by any one or more of the persons named in the charter or act of incorporation, and setting forth the time, place and purposes of the meeting, and such notice shall, seven days at least before the meeting be delivered to each member, or left at his place of residence, or published in some newspaper of the county where the corporation may be established, or where its principal place of business shall be situate, or if there be no newspaper in the county then in two of the Halifax newspapers. First meeting,  
how called.

5. Whenever by reason of the death, absence or disability of the officers of any corporation there shall be no person authorized to call or preside at a meeting thereof, any justice of the peace may on a written application of three or more of the members issue a warrant to any one of such members, directing him to call a meeting of the corporation by giving the notice as required by law; and the justice may in the same warrant direct such person to preside at such meeting if there shall be no officer present legally authorized to preside thereat. Meeting, how  
called in special  
cases.

6. Such corporation when so assembled may elect officers to fill all vacancies then existing, and may transact such other business as might by law be transacted at regular meetings of the corporation. Powers of cor-  
poration when  
assembled.

7. Notwithstanding the corporation may hold real estate, the shares of the stockholders shall be deemed to be personal property for all purposes. Shares, personal  
property.

8. The real estate of the company may be sold under execution in the same manner as personal estate, and the sheriff shall immediately after the sale execute a deed to the purchaser, which shall convey all the estate and interest of the company in the real estate so sold and conveyed. Real estate sold  
as personal pro-  
perty.

9. All Acts or charters of incorporation shall expire unless the company thereby established shall go into operation within three years from the passing thereof, unless otherwise specially provided therein. Acts to expire  
unless put in  
operation within  
three years.

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10. All corporations whose charters after they shall have gone into operation shall expire by their own limitation, or shall be annulled by forfeiture or otherwise, shall nevertheless be continued as bodies corporate for the term of three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending suits by or against them, and of enabling them to settle and close their concerns, to dispose of and convey their property, and to divide their capital stock ; but not for the purpose of continuing the business for which such corporations were established.

Trustees may be appointed to wind up business within the three years.

11. When the charter of any corporation shall expire or be annulled as provided in the preceding section, the Supreme Court on application of any creditor of such corporation or of any member, at any time within the three years, may appoint a trustee or trustees to take charge of the estate and effects of the corporation, and to collect the debts and property due and belonging thereto, with power to prosecute and defend suits in the name of the corporation, and to appoint agents under them, and to do all other acts which might be done by such corporation if in being that may be necessary for the final settlement of the unfinished business of the corporation ; and the power of such trustees may be continued beyond the three years and as long as the court shall think necessary.

Officers and members, how sued.

12. When any officer or member of a corporation is liable for any debts of the corporation, or for acts in relation to its business, or to contribute for money paid by other officers or members on account of any such debts or acts, he may be sued therefor in the Supreme Court.

Liability of individual members.

13. No member of any corporation shall be relieved from individual liability for its debts or obligations ; but each member thereof shall be liable as a partner to the same extent as if no corporation existed ; and in case any execution issued on any judgment against the corporation shall be returned unsatisfied the individual real and personal estate of every member of the corporation shall be liable to respond such judgment under execution issued thereon in the same manner as if the same were a private debt due by such member, unless the special Act creating the corporation shall exempt its members from such liability ; and any member who shall be so compelled to pay any moneys on account of the debts of the corporation shall be entitled to credit therefor in the books of the corporation.

Liability of directors, &c., personal in certain cases.

14. The directors or board of managers of any such corporation, the liability of whose members shall be limited by the Act or charter of incorporation, unless otherwise

specially directed therein, shall in all cases be personally liable for any responsibility incurred by them on account of the corporation, beyond the amount of the stock subscribed, without the sanction of the company obtained at a meeting thereof held in accordance with the by-laws, unless such larger amount of dealing be specially authorized by the Act or charter of incorporation; but this section shall not extend to insurance companies. CHAP. 78.

15. The acts of incorporated companies performed within the scope of their charters or Acts creating them shall be valid, notwithstanding they may not be done under or be authenticated by the seal of such corporations. Acts of companies valid without seal.

16. No corporation shall issue notes or bills for payment of money for the purpose of circulating the same as money, or engage in any banking or insurance business unless especially authorized to do so by its Act of incorporation; and if any corporation not so authorized shall issue such bills or notes or shall engage in any banking or insurance business, its charter shall be thereby rendered void. No company to engage in banking or insurance business unless specially authorized.

17. Whenever in any Act or charter of incorporation any disputes, or matters of controversy in which the corporation may be interested, or any damages to which they may become liable, shall be directed to be settled or ascertained by arbitration, the mode of proceeding on such arbitration unless otherwise prescribed shall be as follows, viz., unless both parties shall concur in the appointment of a single arbitrator, each party on the request of the other party shall, by writing under the hand of the parties interested, or on behalf of the corporation under the hand of the president or one of the directors and the secretary, appoint an arbitrator to decide the matter in question: and after such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of any of the parties operate as a revocation thereof; and if either party shall fail to appoint an arbitrator within fourteen days after service upon him of such written request, a judge of the Supreme Court, at the instance of the party making such request, may appoint an arbitrator to act on behalf of both parties, who may proceed to hear and determine the matters in question, and his award shall be final. If any arbitrator after his appointment die or become incapable from absence or otherwise, or refuse, or for seven days neglect, to act as arbitrator, the party by whom he was nominated, or a judge of the Supreme Court, may appoint in writing some other person to act in his place; and if for seven days after such substituted arbitrator shall have Arbitrations, how conducted where corporation is a party.



CHAP. 78. received notice in writing from the other party for that purpose he fail to do so, the other arbitrator may proceed to hear and determine the matters in question.

Where two arbitrators shall have been appointed they shall before entering upon the matters referred to them appoint by writing under their hands an umpire to decide in case they shall differ, and if the umpire shall die, refuse, or for seven days neglect, to act they shall forthwith appoint another umpire in his place, whose award, together with that of one or both of the arbitrators, shall be final.

The arbitrators or umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the matters referred to them, and may examine the parties and their witnesses on oath, and administer the oaths necessary for that purpose.

Unless otherwise provided in the Act or charter of incorporation, the costs attending such arbitration shall be paid by such party or by both parties in such proportions as may be directed in the award.

The submission to any such arbitration may be by rule or order of any court.

Abstract of receipts, &c., of all joint stock incorporated companies to be filed.

18. All joint stock incorporated companies doing business in this Province by agents or otherwise shall once in every year produce and file in the Provincial Secretary's office an abstract of all their receipts, expenditures, profits and losses within the Province; and when required by the Governor-in-Council such rules, by-laws, accounts and such other of their proceedings as shall be specified in such requisition.

Penalty.

19. Any such corporate body refusing or neglecting to furnish such abstract or to comply with such requisition shall forfeit a penalty of twenty dollars for every month during which such default shall continue.

Insurance corporations to make annual returns to office of Provincial Secretary.

20. On or before the last day of February in every year a return shall be made into the Provincial Secretary's office by the president, agent or manager of every company, corporate body or agency doing business as insurers in this Province, of the business of insurance upon lives, against fire, and upon all marine risks done by them respectively between the first day of January and the thirty-first day of December preceding such return, both days being included, which return shall comprehend the number of policies entered into, the number of policies renewed, the amount insured, and the premiums paid, and in case of insurance against fire, the nature of the property insured, whether real or personal, and its situation, whether in the City of Halifax or in other parts of the Province; in case

of marine risks the ports to which the vessels insured belong, where it can be known, and shall also state the capital and other security for the payment of losses and where the same is situated; and in case of marine insurance companies and corporate bodies out of Nova Scotia, whether there is any security or capital within the Province for the payment of losses, and the nature, permanency and amount thereof; which returns shall be certified to be true by the president, agent or manager of every such company, corporate body or agency respectively; and every such president, agent or manager neglecting to make such return, or knowingly making a false or defective return, shall forfeit two hundred dollars.

21. None of the provisions of this Chapter shall apply to companies incorporated under the provisions of Chapter 79, of the Revised Statutes, "Of Joint Stock Companies," except in so far as any of the provisions of this Chapter may be embodied in said Chapter.

Provisions of this Chapter to apply to companies under Chapter 79 so far as applicable.

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## CHAPTER 79.

### OF JOINT STOCK COMPANIES.

1. This Chapter may be cited as the "Nova Scotia Joint Stock Companies' Act." Alternative title.

2. The following expressions in this Chapter and in all letters patent and supplementary letters patent issued under the same, shall have the meaning hereby assigned to them respectively unless there is something in the subject or context repugnant to such construction, that is to say:

(a.) The expression "the company" means the company so incorporated by letters patent.

(b.) The expression "the undertaking" means the business of every kind which the company is authorized to carry on.

(c.) The expression "loan company" means a company chartered for any of the purposes to which the powers of loan companies extend as hereinafter provided.

(d.) The expression "real estate or land" includes messuages, lands, tenements and hereditaments of any tenure, and all immovable property of every kind.

(e.) The expression "shareholder" means every subscriber to or holder of stock in the company, and includes the personal representatives of the shareholder.

CHAP. 79. (f.) The word "manager" includes the cashier and secretary.

Governor-in-Council may grant charter.

3. The Governor-in-Council may by letters patent under the Great Seal of the Province grant a charter to any number of persons not less than five who shall petition therefor, constituting such persons and others who may become shareholders in the company thereby created a body corporate and politic for any of the purposes or objects to which the legislative authority of the Parliament of Nova Scotia extends, except the construction and working of railways and loan companies.

Conditions of application for letters patent.

4. The applicants for such letters patent must give at least one month's previous notice in the *Royal Gazette* of their intention to apply for the same, stating therein :

(a.) The proposed corporate name of the company, which shall not be that of any other known company incorporated or unincorporated, or any name liable to be confounded therewith, or otherwise on public grounds objectionable.

(b.) The purposes within the purview of this Chapter for which its incorporation is sought.

(c.) The place within the Province of Nova Scotia which is to be its chief place of business.

(d.) The intended amount of its capital stock.

(e.) The number of shares and amount of each share.

(f.) The name in full and the address and calling of each of the applicants, with special mention of the names of not less than three nor more than fifteen of their number who are to be the first or provisional directors of the company, and the major part of whom must be resident in Nova Scotia.

Petition for letters patent.

5. At any time not more than one month after the last publication of such notice the applicants may petition the Governor through the Provincial Secretary of Nova Scotia for the issue of such letters patent.

(a.) Such petition must recite the facts set forth in the notice, and must further state the amount of stock taken by each applicant, and also the amount paid in upon the stock of each applicant, and the manner in which the same has been paid in and is held by the company. Such list of shareholders must be sent in with the petition in duplicate.

(b.) The aggregate of the stock so taken must be at least the one half of the total amount of the stock of the company.

(c.) The aggregate so paid in thereon must be at least ten per cent.

(d.) Such aggregate must have been paid into the credit of the company or of trustees therefor, and must be

standing at such credit in some bank or banks in Nova Scotia, unless the object of the company is one requiring that it should own real estate, in which case any part not more than one half of such aggregate may be taken as being paid in if *bonâ fide* invested in real estate suitable to such object, duly held by trustees for the company, and being of the required value over and above all incumbrances thereon.

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(e.) The petition may ask for the embodying in the letters patent of any provision which under this Chapter might be made by by-law of the company incorporated, and such provision so embodied shall not, unless provision to the contrary be made in the letters patent, be subject to repeal or alteration by by-law.

6. Before the letters patent are issued the applicants must establish to the satisfaction of the Provincial Secretary, or of such other officer as may be charged by order of the Governor-in-Council to report thereon, the sufficiency of their notice and petition, and the truth and sufficiency of the facts therein set forth, and that the proposed name is not the name of any other known incorporated or unincorporated company; and to that end the Provincial Secretary or such other officer may take and keep on record any requisite evidence in writing by solemn declaration under the Act of the Parliament of Canada, 37 Victoria, 1874, entitled, "An Act for the Suppression of Voluntary and Extra-judicial Oaths."

Proof of sufficiency of preliminary steps.

7. The letters patent shall state the objects of the company to be incorporated thereby, and shall give the names of the directors thereof, and shall state the amount of the capital stock of the company, the number of shares into which said capital stock is divided, the number of shares taken or subscribed, and the aggregate amount in cash paid thereon. A duplicate list of shareholders stamped with the seal of the Provincial Secretary's office shall be attached to the letters patent.

Contents of letters patent.

8. The Governor may if he think fit give to the company a corporate name different from that proposed by the applicants in their published notice, if the latter is objectionable.

Different name may be given.

9. Notice of the granting of such letters patent shall be forthwith given by the Provincial Secretary in the *Royal Gazette*, in the form of schedule A appended to this Chapter, and thereupon from the date of the letters patent the persons therein named and their successors shall be a body corporate and politic by the name mentioned therein.

Notice of granting given in Royal Gazette.

10. Every company so incorporated may acquire, hold, sell and convey any real estate requisite for the carrying

Powers of company.

CHAP. 79. on of the undertaking of such company, and shall forthwith become and be invested with all property and rights, real and personal, theretofore held by or for it under any trust created with a view to its incorporation, and with all the powers, privileges and immunities requisite or incidental to the carrying on of its undertaking, as if it had been incorporated by a special Act of Parliament embodying the provisions of this Chapter and of the letters patent.

Governor may change name of company.

11. In case it should be made to appear to the satisfaction of the Governor-in-Council that the name of any company (whether given by the original or by supplementary letters patent, or on amalgamation) incorporated under the provisions of this Chapter, is the same as the name of an existing incorporated or unincorporated company, or so similar thereto as to be liable to be confounded therewith, it shall be lawful for the Governor-in-Council to direct the issue of supplementary letters patent, reciting the former letters, and changing the name of the company to some other name, to be set forth in the supplementary letters patent.

Company may have its name changed.

12. When a company incorporated under the provisions of this Chapter is desirous of adopting another name, the Governor-in-Council, upon being satisfied that the change desired is not for any improper purpose, may direct the issue of supplementary letters patent, reciting the former letters, and changing the name of the company to some other name, to be set forth in the supplementary letters patent.

Change of name not to affect proceedings.

13. No alteration of its name under the two last preceding sections shall affect the rights or obligations of the company, and all proceedings may be continued or commenced by or against the company by its new name, that might have been continued or commenced by or against the company by its former name.

Company may have powers extended.

14. The company may from time to time by a resolution passed by a vote of at least two thirds in value of the total shareholders of the company, at a special general meeting called for the purpose, authorize the directors to apply for supplementary letters patent, extending the powers of the company to such other purposes or objects within the purview of this Chapter, as may be defined in the resolution.

Supplementary letters patent to extend powers.

15. The directors may at any time within six months after the passing of any such resolution, petition the Governor through the Provincial Secretary for the issue of such supplementary letters patent.

Notice of application.

(2.) The applicants for such supplementary letters patent must give at least one month's previous notice in the *Royal Gazette*, of their intention to apply for the same,

stating therein the purposes or objects to which it is desired to extend the powers of the company. CHAP. 79.

16. Before any such supplementary letters patent are issued the applicants must establish to the satisfaction of the Provincial Secretary, or of such other officer as may be charged by the Governor-in-Council to report thereon, the due passing of the resolution authorizing the application and the sufficiency of their notice and petition, and to that end the Provincial Secretary, or such other officer shall take and keep on record any requisite evidence in writing by solemn declaration under the Act 37 Victoria, 1874, above mentioned, or by oath or affirmation. Proof of preliminary steps.

17. Upon due proof so made the Governor-in-Council may grant supplementary letters patent under the Great Seal of the Province, extending the powers of the company to all or any of the objects defined in the resolution; and notice thereof shall be forthwith given by the Provincial Secretary in the *Royal Gazette*, in the form schedule C appended to this Chapter; and thereupon from the date of the supplementary letters patent the undertaking of the company shall extend to and include the other purposes or objects set out in the supplementary letters patent, as fully as if such other purposes or objects were mentioned in the original letters patent. Governor may grant after notice.  
Notice of such granting.

18. The company may by by-law increase to not more than fifteen, or decrease to not less than three, the number of its directors, or change the company's chief place of business in Nova Scotia; provided that no by-law for either of the said purposes shall be valid or acted upon unless it is sanctioned by a vote of not less than two thirds in value of the shareholders present in person or represented by proxy at a general meeting duly called for considering the by-law, nor until a copy of such by-law certified under the seal of the company has been deposited with the Provincial Secretary, and has also been published in the *Royal Gazette*. Directors may be increased or decreased.

19. The directors of the company may at any time make a by-law subdividing the existing shares into shares of a smaller amount. But such by-law shall not come into force or operation until ratified by a majority of the shareholders at a general or special meeting regularly called for that purpose. Directors may sub-divide shares.

20. The directors of the company at any time after the whole capital stock of the company shall have been taken up, and fifty per cent. thereon paid up, but not sooner, may make a by-law for increasing the capital stock of the company to any amount which they may consider Directors may increase capital stock by by-law.

CHAP. 79. requisite, in order to the due carrying out of the objects of the company.

What the by-law shall declare and may prescribe.

(2.) Such by-law shall declare the number of the shares of the new stock, and may prescribe the manner in which the same shall be allotted, and in default of its so doing the control of such allotment shall be held to vest absolutely in the directors.

Directors may decrease capital stock by by-law.

21. The directors of the company at any time may make a by-law for decreasing the capital stock of the company to any amount which they may consider sufficient, in order to the due carrying out of the undertaking of the company and advisable.

Contents of by-law.

(2.) Such by-law shall declare the number and value of the shares of the stock as so decreased, and the allotment thereof, or the rule or rules by which the same shall be made.

By-laws, not in force until ratified.

22. But no by-law for increasing or decreasing the capital stock of the company, or subdividing the shares, shall have any force or effect whatever, until after it shall have been sanctioned by a vote of not less than two thirds in value of all the shareholders of the company, at a general meeting of the company duly called for considering the same, and afterwards confirmed by supplementary letters patent.

Liability of shareholders not to be affected.

(2.) The liability of shareholders to persons who were, at the time of the reduction of the capital, creditors of the company, shall remain as though the capital had not been decreased.

Directors may petition for supplementary letters.

23. At any time not more than six months after such sanction of such by-law, the directors may petition the Governor through the Provincial Secretary for the issue of supplementary letters patent to confirm the same.

Form of petition.

(2.) With such petition they must produce a copy of such by-law under the seal of the company and signed by the president, vice-president, or secretary, and establish to the satisfaction of the Provincial Secretary, or of such other officer as may be charged by the Governor-in-Council to report thereon, the due passage and sanction of such by-law, and the *bond fide* character and expediency of the increase or decrease of capital, or subdivision of shares thereby provided for.

Provincial Secretary to keep record.

(3.) And to that end the Provincial Secretary, or such officer, shall take and keep on record any requisite evidence in writing, by solemn declaration, as above mentioned oath or affirmation.

Governor may grant such letters patent.

24. Upon due proof so made, the Governor-in-Council may grant such supplementary letters patent under the Great Seal of the Province, and notice thereof shall be

forthwith given by the Provincial Secretary in the *Royal Gazette*, in the form of schedule B appended to this Chapter; and thereupon from the date of the supplementary letters patent the capital stock of the company shall be and remain increased or decreased, and the shares shall be subdivided as the case may be, to the amount, in the manner and subject to the conditions set forth by such by-law; and the whole of the stock as so increased or decreased shall become subject to the provisions of this Chapter in like manner (so far as may be) as though every part thereof had been or formed part of the stock of the company originally subscribed.

25. All powers given to the company by the letters patent shall be exercised subject to the provisions and restrictions contained in this Chapter. Powers to be exercised subject to this Chapter.

26. The affairs of the company shall be managed by a board of not less than three nor more than fifteen directors. Numbers of directors.

27. The persons named as such in the letters patent shall be the directors of the company, until replaced by others duly appointed in their stead. Directors named in letters patent to serve.

28. No person shall be elected or appointed as a director thereafter unless he is a shareholder owning stock absolutely in his own right and to the amount required by the by-laws of the company, and not in arrear in respect of any call thereon; and the major part of the directors of the company shall at all times be persons resident in Nova Scotia. Qualification for a director.

29. Directors of the company shall be elected by the shareholders in general meeting of the company, assembled at some place within the Province of Nova Scotia, at such times, in such wise, and for such term not exceeding two years, as the letters patent or (in default thereof) the by-laws of the company may prescribe. Directors, how elected.

30. In default only of other express provisions in such behalf by the letters patent or by laws of the company:

(a.) Such election shall take place yearly, all the members of the board retiring, and (if otherwise qualified) being eligible for re-election. Election to take place annually.

(b.) Notice of the time and place for holding general meetings of the company shall be given at least twenty-one days previously thereto, in some newspaper published in or as near as may be to the place where the chief office or place of business of the company is situate. Notice of meeting

(c.) At all general meetings of the company each shareholder shall be entitled to give one vote for each share then held by him. Such votes may be given in person or by proxy, the holder of any such proxy being himself a shareholder; but no shareholder shall be entitled, Mode of voting.



CHAP. 79. either in person or by proxy, to vote at any meeting unless he shall have paid all the calls upon all the shares held by him. All questions proposed for the consideration of the shareholders shall be determined by the majority of votes, the chairman presiding at such meeting having the casting vote in case of an equality of votes.

Ballot. (d.) Elections of directors shall be by ballot.

Vacancies, how filled. (e.) Vacancies occurring in the board of directors may be filled for the unexpired remainder of the term by the board from among the qualified shareholders of the company.

Appointment of president and officers. (f.) The directors shall from time to time elect from among themselves a president, and if they see fit a vice-president, of the company, and may also name all other officers thereof.

When directors not regularly elected. 31. If at any time an election of directors be not made, or do not take effect at the proper time, the company shall not be held to be thereby dissolved; but such election may take place at any general meeting of the company, duly called for that purpose; and the retiring directors shall continue in office until their successors are elected.

Powers of directors, &c. 32. The directors of the company shall have full power in all things to administer the affairs of the company, and to make or cause to be made for the company any description of contract which the company may by law enter into; and may from time to time make by-laws not contrary to law, nor to the letters patent of the company, nor to this Chapter, to regulate the allotment of stock, the making of calls thereon, the payment thereof, the issue and registration of certificates of stock, the forfeiture of stock for non-payment, the disposal of forfeited stock and of the proceeds thereof, the transfer of stock, the declaration and payment of dividends, the number of the directors, their term of service, the amount of their stock qualification, the appointment, functions, duties and removal of all agents, officers and servants of the company, the security to be given by them to the company, their remuneration, and that (if any) of the directors, the time at which and place where the annual meetings of the company shall be held, the calling of meetings, regular and special, of the board of directors and of the company, the quorum, the requirements as to proxies, and the procedure in all things of such meetings, the imposition and recovery of all penalties and forfeitures admitting of regulation by by-law, and the conduct in all other particulars of the affairs of the company; and may from time to time repeal, amend, or re-enact the same; but every such by-law and every repeal, amendment or re-enactment thereof, unless in the meantime confirmed at a general meeting of the company

By-laws, when in force.

duly called for that purpose, shall only have force until the next annual meeting, of the company, and in default of confirmation thereat shall at and from that time only cease to have force; provided always that one fourth part in value of the shareholders of the company shall at all times have the right to call a special meeting thereof for the transaction of any business specified in such written requisition and notice as they may issue to that effect; provided also that no by-law for the issue of, allotment, or sale of any portion of the unissued stock at any greater discount or at any less premium than what has been previously authorized at a general meeting, or for the payment of the president or any director, shall be valid or acted upon until the same has been confirmed at a general meeting.

33. A copy of any by-law of the company, under their seal and purporting to be signed by any officer of the company, shall be received as against any shareholder of the company as *prima facie* evidence of such by-law, in all courts in Nova Scotia. Certified copy of by-laws *prima facie* evidence.

34. The company shall cause a book or books to be kept by the secretary, or by some other officer especially charged with that duty, wherein shall be kept recorded: Books of the company.

(a.) A copy of the letters patent incorporating the company, and of any supplementary letters patent, and of all by-laws thereof.

(b.) The names alphabetically arranged of all persons who are or have been shareholders.

(c.) The address and calling of every such person, while such shareholder.

(d.) The number of shares of stock held by each shareholder.

(e.) The amounts paid in and remaining unpaid, respectively, on the stock of each shareholder.

(f.) The names, addresses, and calling of all persons who are or have been directors of the company, with the several dates at which each became or ceased to be such director.

(g.) A book called the Register of Transfers shall be provided, and in such book shall be entered the particulars of every transfer of shares in the capital of the company.

35. Such books shall, during reasonable business hours of every day except Sundays and holidays, be kept open for the inspection of shareholders and creditors of the company and their personal representatives, at the office or chief place of business of the company; and every such shareholder, creditor, or representative may make extracts therefrom. Books to be open for inspection.

CHAP. 79. 36. Every company neglecting to keep such book or books as aforesaid shall forfeit its corporate rights.

Effect of neglect to keep books.

Books to be *prima facie* evidence.

Penalty for false entry.

37. Such books shall be *prima facie* evidence of all facts purporting to be thereby stated, in any suit or proceeding against the company, or against any shareholder.

38. Every director, officer, or servant of the company who knowingly makes or assists to make any untrue entry in any such book, or who refuses or wilfully neglects to make any proper entry therein, or to exhibit the same, or to allow the same to be inspected and extracts to be taken therefrom, is guilty of a misdemeanor, and shall also be liable in damages for all loss or injury which any person interested may have sustained thereby.

Stock to be personal property.

39. The stock of the company shall be deemed personal estate, and shall be transmissible as such, and shall be transferable in such manner only, and subject to all such conditions and restrictions, as by this Chapter, or by the letters patent, or by by-laws of the company, are or shall be prescribed.

Directors may allot stock.

40. If the letters patent or the supplementary letters patent make no other definite provision, the stock of the company, or any increased amount thereof, so far as it is not allotted thereby, shall be allotted when and as the directors by by-law may ordain.

What shall be a valid transfer of shares.

41. No transfer of shares, unless made by sale under execution, or under the decree, order or judgment of some competent court in that behalf, shall be valid for any purpose whatever, save only as exhibiting the rights of the parties thereto towards each other, and as rendering the transferee liable, *ad interim*, jointly and severally with the transferor, to the company and their creditors, until the entry thereof has been duly made in such book as aforesaid:

Directors liable for stock transferred in certain cases.

42. No transfer of shares whereof the whole amount has not been paid up shall be made without the consent of the directors, and whenever any transfer of shares not fully paid in has been made with such consent to a person being apparently of insufficient means to fully pay up such shares, the directors, jointly and severally, shall be liable to the creditors of the company in the same manner and to the same extent as the transferring shareholder but for the transfer would have been; but if any director present when any such transfer is allowed do forthwith, or if any director then absent do within twenty-four hours after he shall have become aware thereof and able to do so, enter on the minute book of the board of directors his protest against the same, and do within eight days thereafter publish such protest in at least one newspaper published at or as near as possible to the office or chief place of business

of the company, such director may thereby, and not CHAP. 79.  
 otherwise, exonerate himself from such liability.

43. No share shall be transferable until all previous  
 calls thereon have been fully paid in. Stock, when not transferable.

44. The directors may decline to register any transfer  
 of shares belonging to any member who is indebted to  
 the company. Directors may decline to register transfer.

45. Whenever the interest in any share or shares of the  
 capital stock of the company shall be transmitted by the death  
 of any shareholder or otherwise, or whenever the ownership  
 of or legal right of possession in any such share or shares  
 shall change by any lawful means other than by transfer  
 according to the provisions of this Chapter, and the  
 directors or company shall entertain reasonable doubts as  
 to the legality of any claim to and upon such share or  
 shares of stock, then and in such case it shall be lawful for  
 the company to make and file in one of the superior courts  
 of law or equity in the Province a declaration and petition  
 in writing, addressed to the justice or justices of the court,  
 setting forth the facts and the number of shares previously  
 belonging to the party in whose name such shares stand in  
 the books of the company, and praying for an order or  
 judgment adjudicating and awarding said shares to the  
 party or parties legally entitled to the same, and by which  
 order or judgment the company shall be guided and held  
 fully harmless and indemnified and released from all and  
 every other claim for the said shares or arising therefrom.  
 Provided always that notice of such petition shall be given  
 to the party claiming such share or shares, or to the  
 attorney of such party duly authorized for the purpose,  
 who shall upon the filing of such petition establish his  
 right to the several shares referred to in such petition,  
 and the delays to plead and all other proceedings in such  
 cases shall be the same as those observed in analogous  
 cases before the said superior courts. Provided also that  
 the costs and expenses of procuring such order and  
 adjudication shall be paid by the party or parties to whom  
 the said shares shall be declared lawfully to belong, and  
 such shares shall not be transferred until such costs and  
 expenses be paid, saving the recourse of such party against  
 any party contesting his right. Adjudication of disputed interest and shares.

46. Any transfer of the share or other interest of a  
 deceased member made by his personal representative shall,  
 notwithstanding such personal representative may not  
 himself be a member, be of the same validity as if he had  
 been a member at the time of his execution of the  
 instrument of transfer. Transfer of stock of deceased member.

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Shareholder liable for amount not paid up.

47. Each shareholder until the whole amount of his shares has been paid up shall be individually liable to the creditors of the company to an amount equal to that not paid up thereon, but shall not be liable to an action therefor by any creditor before an execution against the company has been returned unsatisfied in whole or in part, and the amount due on such execution, not exceeding the amount unpaid on his shares as aforesaid, shall be the amount recoverable with costs against such shareholder, and any amount so recoverable being paid by the shareholder shall be taken as paid on his shares.

Not liable for more than amount unpaid.

48. The shareholders of the company shall not as such be held responsible for any act, default or liability whatsoever of the company, or for any engagement, claim, payment, loss, injury, transaction, matter or thing whatsoever, relating to or connected with the company, beyond the amount unpaid on their respective shares in the capital stock thereof, subject to the provisions of the next preceding section.

Liability of persons holding stock in trust.

49. No person holding stock in the company as an executor, administrator, tutor, curator, guardian, or trustee shall be personally subject to liability as a shareholder; but the estates and funds in the hands of such person shall be liable in like manner and to the same extent as the testator or intestate, or the minor ward, or interdicted person, or the person interested in such trust fund would be if living and competent to act, and holding such stock in his own name; and no person holding such stock as collateral security shall be personally subject to such liability; but the person pledging such stock shall be considered as holding the same, and shall be liable as a shareholder accordingly.

Personal representatives may vote.

50. Every such executor, administrator, curator, guardian, or trustee shall represent the stock in his hands at all meetings of the company, and may vote accordingly as a shareholder; and every person who pledges his stock may nevertheless represent the same at all such meetings and may vote accordingly as a shareholder.

Company not bound to see to execution of any trust.

51. The company shall not be bound to see to the execution of any trust, whether express or implied or constructive, in respect of any share, and the receipt of the shareholder in whose name the same may stand in the books of the company shall be a valid and binding discharge to the company for any dividend or money payable in respect of such share, and whether or not notice of such trust has been given to the company; and the company shall not be bound to see to the application of the money paid upon such receipt.

52. The directors may from time to time make such calls upon the members in respect of all moneys unpaid upon their respective shares, as they shall think fit, at such times and places and in such payments or instalments as the letters patent, or this Chapter, or the by-laws of the company, may require or allow.

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Directors may make calls.

53. A call shall be deemed to have been made at the time when a resolution of the directors authorizing such call was passed; and if a shareholder fails to pay any call due from him before or on the day appointed for the payment thereof, he shall be liable to pay interest for the same at the rate of six per cent. per annum from the day appointed for payment to the time of actual payment thereof.

When calls deemed to be made.

54. The directors may if they think fit receive from any member willing to advance the same, all or any part of the amounts due on the shares held by such member beyond the sums then actually called for, and upon moneys so paid in advance, or so much thereof as shall from time to time exceed the amount of the calls then made upon the shares in respect of which such advance shall be made, the company may pay interest at such rate not exceeding eight per cent. per annum as the members paying such sum in advance and the directors shall agree upon.

Directors may receive payment in advance on shares, and allow interest thereon.

55. If after such demand or notice as by the letters patent or by by-laws of the company may be prescribed, any call made upon any share or shares be not paid within such time as by such letters patent or by-laws may be limited in that behalf, the directors in their discretion, by vote to that effect duly recorded in their minutes, may summarily declare forfeited any shares whereon such payment is not made, and the same shall thereupon become the property of the company, and may be disposed of as, by the by-laws of the company or otherwise, they may ordain; but notwithstanding such forfeiture the holder of such shares at the time of forfeiture shall continue liable to the then creditors of the company for the full amount unpaid on such shares at the time of forfeiture, less any sums which may have been subsequently received by the company in respect thereof.

Directors may declare stock forfeited.

56. The company may, if they see fit, instead of declaring forfeited any share or shares, enforce payment of all calls and interest thereon by action in any competent court; and in any such action it shall not be necessary to set forth the special matter, but it shall be sufficient to declare that the defendant is a holder of one share or more, stating the number of shares, and is indebted in the sum of money to which the calls in arrear amount in

Directors may enforce payment of calls.

CHAP. 79. respect of one call or more upon one share or more, stating the number of calls and the amount of each, whereby an action hath accrued to the company under this Chapter; and a certificate under their seal and purporting to be signed by any officer of the company, to the effect that the defendant is a shareholder, that such call or calls has or have been made, and that so much is due by him and unpaid thereon, shall be received as against the defendant in all courts as *prima facie* evidence to that effect.

Directors indemnified in suits, &c.

57. Every director of the company, and his heirs, executors, and administrators, and estate and effects, respectively, may, with the consent of the company, given at any general meeting thereof, from time to time and at all times, be indemnified and saved harmless out of the funds of the company, from and against all costs, charges and expenses whatsoever, which he shall or may sustain or incur in or about any action, suit or proceeding which shall be brought, commenced or prosecuted against him for or in respect of any act, deed, matter or thing whatsoever made, done or permitted by him, in or about the execution of the duties of his office; and also from and against all other costs, charges and expenses which he shall sustain or incur, in or about or in relation to the affairs thereof, except such costs, charges or expenses as shall be occasioned by his own wilful neglect or default.

Dividend not to impair capital.

58. The company shall not make any dividend whereby their capital will be in any degree reduced.

Debts to company may be deducted.

59. The directors may deduct from the dividends payable to any member all such sum or sums of money as may be due from him to the company, on account of calls or otherwise.

Liability of directors declaring dividend.

60. If the directors of the company declare and pay any dividend when the company is insolvent, or any dividend the payment of which renders the company insolvent or diminishes the capital stock thereof, they shall be jointly and severally liable, as well to the company as to the individual shareholders and creditors thereof, for all the debts of the company then existing and for all thereafter contracted during their continuance in office, respectively; but if any director present when such dividend is declared do forthwith, or if any director then absent do within twenty-four hours after he shall have become aware thereof and able so to do, enter on the minutes of the board of directors his protest against the same, and within eight days thereafter publish such protest in at least one newspaper published at or as near as may be possible to the office or chief place of business of the

company, such director may thereby and not otherwise exonerate himself from such liability. CHAP. 79.

61. The company shall at all times have an office in the city or town in which their chief place of business shall be, which shall be the legal domicile of the company in Nova Scotia; and notice of the situation of that office, and of any change therein, shall be advertised in the *Royal Gazette*, and they may establish such other offices and agencies elsewhere in the Province of Nova Scotia as they may deem expedient. Offices and agencies of company in Nova Scotia.

62. Any summons, notice, order, or other process, or document, required to be served upon the company, may be served by leaving the same at the said office in the city or town in which their chief place of business may be, with any grown person in the employ of the company, or on the president or secretary of the company, or by leaving the same at the domicile of either of them, or with any grown person of his family or in his employ; or if the company have no known office or chief place of business, and have no president or secretary, then the court may order such publication as it may deem requisite to be made in the premises, and such publication shall be held to be due service upon the company. Service of process on company.

63. Notice requiring to be served by the company upon the members, may be served either personally or by sending them through the post, in registered letters, addressed to the members at their places of abode as appearing in the books of the company. Service of notice on members.

64. A notice or other document served by post by the company on a member, shall be taken as served at the time when the registered letter containing it would be delivered in the ordinary course of post; to prove the fact and time of service it shall be sufficient to prove that such letter was properly addressed and registered, and was put into the post office, and the time when it was put in, and the time requisite for its delivery in the ordinary course of post. Service of notice by post.

65. Any summons, notice, order, or proceeding requiring authentication by the company, may be signed by any director, manager, or other authorized officer of the company, and need not be under the common seal of the company; and the same may be in writing or in print, or partly in writing and partly in print. Common seal dispensed with in certain cases.

66. Every deed which any person, lawfully empowered in that behalf by the company as their attorney, signs on behalf of the company, and seals with his seal, shall be binding on the company, and have the same effect as if it was under the common seal of the company. Acts of company's attorney valid.



## CHAP. 79.

Contracts, &c.,  
when binding on  
company.

67. Every contract, agreement, engagement or bargain made, and every bill of exchange drawn, accepted, or endorsed, and every promissory note and cheque made, drawn, or endorsed, on behalf of the company, by any agent, officer or servant of the company, in general accordance with his powers as such under the by-laws of the company, shall be binding upon the company; and in no case shall it be necessary to have the seal of the company affixed to any such contract, agreement, engagement, bargain, bill of exchange, promissory note, or cheque, or to prove that the same was made, drawn, accepted, or endorsed, as the case may be, in pursuance of any by-law, or special vote, or order; nor shall the party so acting as agent, officer, or servant in the company, be thereby subjected individually to any liability whatsoever to any third party therefor. Provided always that nothing in this Chapter shall be construed to authorize the company to issue any note payable to the bearer thereof, or any promissory note intended to be circulated as money, or as the note of a bank, or to engage in the business of banking or insurance.

No loan by com-  
pany to share-  
holders.

68. No loan shall be made by the company to any shareholder, and if such be made all directors and other officers of the company making the same, or in anywise assenting thereto, shall be jointly and severally liable to the amount of such loan, with interest, to the company, and also to the creditors of the company for all debts of the company then existing, or contracted, between the time of the making of such loan and that of the repayment thereof.

Liability of direc-  
tors for wages.

69. The directors of the company shall be jointly and severally liable to the clerks, laborers, servants, and apprentices thereof, for all debts not exceeding six months' wages due for service performed for the company whilst they are of such directors respectively; but no director shall be liable to an action therefor, unless the company has been sued therefor within one year after the debt became due, nor yet unless such director is sued therefor within one year from the time when he ceased to be such director, nor yet before an execution against the company has been returned unsatisfied in whole or in part; and the amount due on such execution shall be the amount recoverable with costs against the directors.

Action between  
company and  
shareholders.

70. Any description of action may be prosecuted and maintained between the company and any shareholder thereof, and no shareholder shall by reason of being a shareholder be incompetent as a witness therein.

In action, how  
incorporation set  
forth.

71. In any action or other legal proceeding it shall not be necessary to set forth the mode of incorporation of the company, otherwise than by mention of it under its corporate

name, as incorporated by virtue of letters patent, or of CHAP. 79.  
 letters patent and supplementary letters patent, as the case  
 may be. under this Chapter; and the notice in the *Royal*  
*Gazette* of the issue of such letters patent shall be *prima*  
*facie* proof of all things thereby declared; and on production  
 of the letters patent or supplementary letters patent  
 themselves, or of any exemplification or copy thereof under  
 the Great Seal of the Province, the fact of such notice shall  
 be presumed; and save only in any proceeding by *scire*  
*facias* or otherwise for direct impeachment thereof, the  
 letters patent or supplementary letters patent themselves,  
 or any exemplification or copy thereof under the Great  
 Seal, shall be conclusive proof of every matter and thing  
 therein set forth.

72. The charter of the company shall be forfeited by Forfeiture of  
 non-user during three consecutive years at any one time, charter for non-  
 or if the company do not go into actual operation within user.  
 three years after it is granted, and no declaration of such  
 forfeiture by any Act of Parliament shall be deemed an  
 infringement of such charter.

73. The company shall be subject to such further and Company subject  
 other provisions as the Legislature may hereafter deem to future legisla-  
 expedient. tion.

74. The Governor-in-Council under this Chapter may Fees on letters  
 designate the department or departments through which patent regulat-  
 the issue of letters patent shall take place, and may ed, &c.  
 prescribe the forms of proceeding and record in respect  
 thereof, and all other matters requisite for carrying out the  
 object of this Chapter.

(1.) All companies whose capital stock shall be less  
 than ten thousand dollars, the fee shall be twenty dollars.  
 Between ten thousand dollars and fifty thousand dollars,  
 the fee shall be thirty dollars. Between fifty thousand  
 dollars and one hundred thousand dollars, the fee shall be  
 forty dollars. Between one hundred thousand dollars and  
 two hundred and fifty thousand dollars, the fee shall be  
 fifty dollars. Between two hundred and fifty thousand  
 dollars and five hundred thousand dollars, the fee shall be  
 sixty dollars. Over five hundred thousand dollars, the fee  
 shall be seventy dollars.

(2.) No steps shall be taken in any department  
 towards the issue of any letters patent or supplementary  
 letters patent under this Chapter, until after the amount of  
 all fees therefor shall have been duly paid.

75. Proof of any matter which may be necessary to Proof, how to be  
 be made under this Chapter, may be made by solemn made, &c.  
 declaration under the Act, 37th Victoria, 1874, Statutes of  
 Canada, or by affidavit before any justice of the peace, or

CHAP. 79. any commissioner for taking affidavits to be used in any of the courts in any of the Provinces of the Dominion, or any notary public, who are hereby authorized and empowered to administer oaths and receive affidavits and declarations for that purpose.

Provisions, when directory only.

76. The provisions of this Chapter relating to matters preliminary to the issue of the letters patent or supplementary letters patent, shall be deemed directory only; and no letters patent or supplementary letters patent issued under this Chapter shall be held void or voidable on account of any irregularity in any notice prescribed by this Chapter, or on account of the insufficiency or absence of any such notice prescribed by this Chapter, or on account of the insufficiency or absence of any such notice, or on account of any irregularity in respect of any matter preliminary to the issue of the letters patent or supplementary letters patent.

Name of company, followed by word "limited," to be painted or affixed on place of business, and to appear on all documents.

77. The company shall paint or affix, and shall keep painted, or affixed, its name with the word "limited" after the name, on the outside of every office or place of business of the company, in a conspicuous position, in letters easily legible, and shall have its name with the said word after it engraven in legible characters on its seal, and shall have its name with the said word after it mentioned in legible characters in all notices, advertisements and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods, purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices, and receipts of the company.

Penalty for contravening previous section.

78. If the company does not affix or paint, and keep painted or affixed its name and the word "limited" after it in manner directed by this Chapter, it shall be liable to a penalty of twenty dollars for not so painting or affixing its name, and to a penalty of twenty dollars per day for every day during which such name is not so kept painted or affixed; and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall be liable to the like penalties, and if any director, manager or officer of the company, or any person on its behalf, uses or authorizes the use of any seal purporting to be a seal of the company whereon its name with the said word "limited" after it is not so engraven as aforesaid, or issues or authorizes the issue of any notice, advertisement, or other official publication of such company, or signs or authorizes to be signed on behalf of such company any bill of exchange, promissory note, endorsement, cheque, order for money or goods, or issues or

authorizes to be issued any bill of parcels, invoice, or receipt of the company, wherein its name with the said word after it is not mentioned in manner aforesaid, he shall be liable to a penalty of two hundred dollars, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods for the amount thereof, unless the same is duly paid by the company. CHAP. 79.

79. Any company for purposes or objects within the purview of this Chapter, heretofore incorporated, whether under a special or general Act, and now being a subsisting and valid corporation, may apply for letters patent under this Chapter, and the Governor-in-Council, upon proof that notice of the application has been inserted four weeks in the *Royal Gazette*, may direct the issue of letters patent incorporating the shareholders of the said company as a company under this Chapter, and thereupon all the rights or obligations of the former company shall be transferred to the new company that might have been continued or commenced by or against the old company; and it shall not be necessary in any such letters patent to set out the names of the shareholders; and after the issue of the letters patent the company shall be governed in all respects by the provisions of this Chapter, except that the liability of the shareholders to creditors of the old company shall remain as at the time of the issue of the letters patent. Existing companies may apply for charters.

80. Where a subsisting company applies for the issue of letters patent under this Chapter, the Governor-in-Council may by the letters patent extend the powers of the company to such other objects within the purview of this Chapter as the applicants may desire, and as the Governor-in-Council may think fit to include in the letters patent, and which have been mentioned in the notice of the application for the same in the *Royal Gazette*, and may by the said letters patent name the first directors of the new company, and the letters patent may be to the new company by the name of the old company or by another name. May apply for charter with extra powers.

81. All the provisions of this Chapter touching the obtaining of supplementary letters patent by companies incorporated hereunder, shall so far as applicable apply and extend to applications for letters patent under the seventy-ninth and eightieth sections hereof. Provisions as to supplementary letters to apply.

82. Subject to the provisions of subsection (d.) of section five of this Chapter, every share in the company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof Shares to be paid in cash.

**CHAP. 79.** in cash, unless the same shall have been otherwise determined by a contract duly made in writing and filed with the Provincial Secretary at or before the issue of such shares.

Prospectus, what it must contain.

83. Every prospectus of the company, and every notice inviting persons to subscribe for shares in the company, shall specify the dates, and the names of the parties to any contract entered into by the company with the promoters, directors or trustees thereof, before the issue of such prospectus or notice, whether subject to adoption by the directors or the company, or otherwise; and any prospectus or notice not specifying the same, shall be deemed fraudulent on the part of the promoters, directors and officers of the company, knowingly issuing the same, as regards any person taking shares in the company on the faith of such prospectus, unless he shall have had notice of such contract.

Issue of bonds by the company.

84. In case a by-law authorizing the same is sanctioned by a vote of not less than two thirds in value of the shareholders then present in person or represented by proxy at a general meeting duly called for considering the by-law, the directors may borrow money upon the credit of the company, and issue the bonds, debentures or other securities for any sums borrowed at such prices as may be deemed necessary, but no such debentures shall be for a less sum than one hundred dollars, and the directors may under the like sanction hypothecate or pledge the real or personal property of the company to secure any sums borrowed by the company. Provided also that the limitation by this section made shall not be held to apply to commercial paper discounted by the company.

Establishment of agencies.

85. The company may have an agency or agencies in any city or town in England, Scotland, Ireland, or the Dominion of Canada.

Statement to be submitted.

86. The directors of every company shall lay before its shareholders a full and clear printed statement of the affairs and financial position of the company at or before each general meeting of the company for the election of directors.

Provisions as to winding up affairs.

87. The company shall be subject to the provisions of any Act of the Legislature of this Province for the winding up of joint stock companies; and to the provisions of any Insolvent Act passed by the Parliament of Canada, so far as they relate to incorporated companies.

Provisions as to companies organized under Cap. 54 R. S., 4th Series.

88. Notwithstanding the provisions contained in section 79 of this Chapter, or any other provision herein contained, any company heretofore organized under the provisions of chapter 54 of the Revised Statutes, fourth series, and the members of the company as such shall have,

possess, and enjoy all powers and authorities which the said company and members would have possessed or enjoyed had the said chapter remained in force and unrepealed. CHAP. 79.

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SCHEDULES.

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A.

Public notice is hereby given that under the "Nova Scotia Joint Stock Companies' Act" letters patent have been issued under the Great Seal of the Province of Nova Scotia, bearing date the — day of —, incorporating (*here state names, address, and calling of each corporator named in the letters patent*), for the purpose of (*here state the undertaking of the company set forth in the letters patent*), with a total capital stock of — dollars, divided into — shares of — dollars —.

Dated at the office of the Provincial Secretary of Nova Scotia this — day of —, 18—.

A. B.,  
Provincial Secretary.

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B.

Public notice is hereby given that under the "Nova Scotia Joint Stock Companies' Act" supplementary letters patent have been issued under the Great Seal of the Province of Nova Scotia, bearing date the — day of —, whereby the total capital stock of (*here state the name of the company*) is increased (*or decreased as the case may be*) from — dollars to — dollars.

Dated at the office of the Provincial Secretary of Nova Scotia, this — day of —, 18—.

A. B.,  
Provincial Secretary.

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C.

Public notice is hereby given that under the "Nova Scotia Joint Stock Companies' Act" supplementary letters patent have been issued under the Great Seal of the Province of Nova Scotia, bearing date the — day of —, whereby the undertaking of the company has been extended to include (*here set out the other purposes or objects mentioned in the supplementary letters patent.*)

Dated at the office of the Provincial Secretary of Nova Scotia, this — day of —, 18—.

A. B.,  
Provincial Secretary.

CHAP. 80.

## CHAPTER 80.

## OF THE WINDING UP OF INCORPORATED COMPANIES.

- Alternative title. 1. This Chapter may be cited as, "The Companies' Winding-up Act."
- Application of Chapter. 2. This Chapter shall apply to all incorporated companies, associations, or clubs, incorporated by the Legislature of the Province of Nova Scotia, or under the authority of any Act of this Province, and to all companies, associations, and clubs, whose incorporation and the affairs thereof in the particulars hereinafter mentioned are subject to the legislative authority of this Province.
- Interpretation of terms. 3. (1.) Unless otherwise expressed or otherwise indicated by the context, the word "court," as used in this Chapter, means the Supreme Court; but any act hereinafter authorized to be done by the court, and any power or authority hereinafter conferred on the court, shall be done or exercised by any judge thereof, except in the case of acts and authorities to be done or exercised upon or after appeal from the decision or judgment of such judge.
- "Court." "Contributory." (2.) The term "contributory" means every person liable to contribute to the assets of a company, association, or club, under this Chapter, in the event of the same being wound up; it shall also, in all proceedings prior to the final determination of the status of such persons, include any person alleged to be a contributory.
- Contributory's representatives. (3.) If any contributory dies either before or after he has been placed in the list of contributories hereinafter mentioned, his personal representatives, heirs and devisees shall be liable in due course of administration to contribute to the assets of the company, association, or club in discharge of the liability of such deceased contributory, and such personal representatives, heirs and devisees shall be deemed to be contributories accordingly.
- "Company." (4.) The term "company" means any corporation, whether joint stock or otherwise, incorporated by the Legislature of this Province, or under the authority of any Act thereof.
- "Extraordinary resolution." (5.) The expression "extraordinary resolution" in this Chapter, means a resolution passed by a majority of not less than three fourths of such members of the company for the time being entitled to vote as may be present in person or by proxy (in cases where by the Act or charter, or instrument of incorporation, or the regulations of the company, proxies are allowed) at any general meeting, of

which notice specifying the intention to propose such resolution, has been duly given. CHAP. 80.

(6.) The expression "special resolution" in this Chapter, means a resolution passed in the manner necessary for an extraordinary resolution, where the resolution, after having been so passed as aforesaid, has been confirmed by a majority of such members (entitled according to the Act, charter, or instrument of incorporation, or the regulations of the company, to vote) as may be present in person or by proxy at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days, or more than one month, from the date of the meeting at which the resolution was first passed. "Special resolution."

#### WHEN COMPANIES MAY BE WOUND UP.

4. A company may be wound up under this Chapter— Companies may be wound up.

(1.) Where the period (if any) fixed for the duration of the company by the Act, charter, or instrument of incorporation has expired, or where the event (if any) has occurred, upon the occurrence of which it is provided by the Act, or charter, or instrument of incorporation that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up. Expiration of time.

(2.) Where the company has passed a special resolution (as hereinbefore defined) requiring the company to be wound up. Special resolution.

(3.) When the company (though it may be solvent as respects creditors) has passed an extraordinary resolution (as hereinbefore defined) to the effect that it has been proved to their satisfaction that the company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same. Extraordinary resolution.

5. Where no such resolution has been passed, as mentioned in the preceding sections, the court may on the application of a contributory make an order for winding up, in case the court is of opinion that it is just and equitable that the company should be wound up. Court may order winding up.

6. A winding up shall be deemed to commence at the time of the passing of the resolution authorizing the winding up, or of making the order directing the winding up. When deemed to commence.

#### REGISTRATION.

7. A copy of the resolution or order for winding up, certified by the liquidator, may be registered in the registry office of any county or registration division wherein the company may have any real estate. Such resolution or order may be accompanied by a description of the real Resolution or order to be registered.



CHAP. 80. estate belonging to the company in the county, and certified by the liquidator to be a correct description; and the registrar shall register the said order and description upon payment to him of a fee of one dollar.

CONSEQUENCES OF COMMENCING TO WIND UP.

Consequences of commencing. 8. The following consequences shall ensue upon the commencement of the winding up of a company under the authority of this Chapter :

Cessation of business. (1.) The company shall from the date of the commencement of such winding up cease to carry on its business, except in so far as may be required for the beneficial winding up thereof, and any transfers of shares, except transfers made to or with the sanction of the liquidators, or any alteration in the status of the members of the company after the commencement of such winding up, shall be void, but the corporate status and all the corporate powers of the company shall, notwithstanding it may be otherwise provided by the Act, charter or instrument of incorporation, continue until the affairs of the company are wound up.

Distribution, &c., of assets. (2.) The property of the company shall be applied in satisfaction of its liabilities, and subject thereto, and to the charges incurred in winding up its affairs, shall (unless it is otherwise provided by the Act, charter or instrument of incorporation) be distributed amongst the members according to their right and interests in the company.

Appointment of liquidators. (3.) Liquidators shall be appointed for the purpose of winding up the affairs of the company and distributing the property.

Mode of appointment. (4.) The company in general meeting shall appoint such persons or person, as the company thinks fit, to be liquidators or a liquidator, and may fix the remuneration to be paid to them or to him, and they shall give such security as the contributories or the court may determine, but when a company is ordered to be wound up, by the court, as provided in section five of this Chapter, the court shall appoint such liquidators or liquidator.

Single liquidator (5.) If one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him.

Powers of directors to cease. (6.) Upon the appointment of liquidators all the powers of the directors or other managing officers shall cease, except in so far as the company, in general meeting or the liquidators may sanction the continuance of such powers.

Quorum of liquidators. (7.) Where several liquidators are appointed every power hereby given may be exercised by such one or more of them as may be determined at the time of the appoint-

ment, or at a subsequent meeting, or in default of such CHAP. 80.  
determination by any number not less than two.

(8.) The contributories may at any meeting appoint Inspectors may be appointed. one or more inspector or inspectors to superintend and direct the proceedings of the liquidator in the management and winding up of the estate, and in case of an inspector being appointed all the powers of the liquidator shall be exercised, subject to the advice and direction of the inspectors, and the contributories may also, at any subsequent meeting held for that purpose, revoke any such appointment, and upon such revocation, or in case of death, resignation, or absence from the Province of an inspector, may appoint another in his stead, and such inspector may be paid such remuneration as the contributories may determine, and when anything is allowed or directed to be done by the inspectors, it may or shall be done by the sole inspector if only one has been appointed.

(9.) The contributories may at any meeting pass any Disposal of property regulated. resolution or order directing the liquidator how to dispose of the property, real or personal, of the company, and in default of their doing so the liquidator shall be subject to the directions, orders and instructions which he from time to time receives from the inspectors, if any, with regard to the mode, terms and conditions on which he may dispose of the whole or any part of the property of the company.

#### GENERAL POWERS OF LIQUIDATORS.

9. The liquidator may be described in all proceedings Liquidator, how described, and powers. by the style of "A. B., the liquidator of" (the particular company in respect of which he is appointed) and shall have power to do the following things :

(1.) To bring or defend any action, suit or other legal To bring or defend actions. proceeding in the name and on behalf of the company.

(2.) To carry on the business of the company so far To carry on business. as may be necessary for the beneficial winding up of the same.

(3.) To sell the real and personal property of the To sell property. company, by public auction or private contract, according to the ordinary mode in which such sales are made, with power to transfer the whole property to any person or company, or to sell the same in parcels, and on such terms as shall seem most advantageous ; but no sale of the assets *en bloc* shall be made without the previous sanction of the contributories given at a meeting called for that purpose.

(4.) In case, after having acted with due diligence in To sell doubtful debts. the collection of the debts, the liquidator finds that there remain debts due, the attempt to collect which would be more onerous than beneficial to the estate, he shall report

CHAP. 80. the same to the contributories or inspectors (if any), and with their sanction he may sell the same by public auction after such advertisement thereof as they may order; and pending such advertisement the liquidator shall keep a list of the debts to be sold, open to inspection at his office, and shall also give free access to all documents and vouchers explanatory of such debts; but all debts amounting to more than one hundred dollars shall be sold separately, except as herein otherwise provided.

To negotiate bills of exchange, &c.

(5.) To draw, accept, make, and endorse any bill of exchange or promissory note, in the name and on behalf of the company, and to raise upon the security of the assets of the company from time to time any requisite sum or sums of money; and the drawing, accepting, making, or endorsing of any such bill of exchange or promissory note as aforesaid, on behalf of the company, shall have the same effect with respect to the liability of the company as if such bill or note had been drawn, accepted, made or endorsed by or on behalf of such company in the course of carrying on the business thereof.

To take out administration, &c.

(6.) To take out if necessary in his official name, letters of administration to any deceased contributory; and to do in his official name any other act which may be necessary for obtaining payment of any money due from a contributory or from his estate, and which act cannot be conveniently done in the name of the company; and in all cases where he takes out letters of administration or otherwise uses his official name for obtaining payment of any money due from a contributory, such money shall, for the purpose of enabling him to take out such letters or recover such money, be deemed to be due to the liquidator himself.

To execute documents.

(7.) To execute in the name of the company all deeds, receipts and other documents.

To use company's seal.

(8.) And to do and exercise all other acts and things that may be necessary for the winding up of the affairs of the company, and the distribution of its assets, and for such purposes to use when necessary the company's seal.

Creditors to be notified to send in claims.

10. The liquidator may fix a certain day or certain days on or within which creditors of the company and others having claims thereon are to send in their claims, or may apply to the court for an order fixing such time and directing in what manner and within what time notice thereof shall be served upon such persons. When a liquidator has given such notices, he shall at the expiration of the time named in the said notices, or the last of the said notices, for sending in such claim, be at liberty to distribute the assets of the company or any part thereof

amongst the parties entitled thereto, having regard to the CHAP. 80.  
 claims of which the liquidator has then notice; and the liquidator shall not be liable for the assets or any part thereof so distributed to any person of whose claim such liquidator had not notice at the time of distributing the said assets or a part thereof as the case may be; but nothing in this Chapter shall prejudice the right of any creditor or claimant to follow assets into the hands of the person who may have received the same.

11. The liquidators may with the sanction of an <sup>Compromises may be made.</sup> extraordinary resolution of the company make such compromise or other arrangement as the liquidators deem expedient with any creditors or persons claiming to be creditors, or persons having or alleging to have any claim present or future, certain or contingent, ascertained or sounding only in damages against the company or whereby the company may be rendered liable.

12. The liquidators may with the sanction of an <sup>Debts may be compromised.</sup> extraordinary resolution of the company compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts and all claims whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and any contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets of the company or the winding up of the company, upon the receipt of such sums, payable at such times and generally upon such terms as may be agreed upon; with power for the liquidators to take any security for the discharge of such debts or liabilities, and to give a complete discharge in respect of all or any such calls, debts or liabilities.

13. When any company is proposed to be or is in the <sup>Transfer of property of company.</sup> course of being wound up, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidators of the first mentioned company, with the sanction of a special resolution of the company by whom they were appointed, conferring either a general authority on the liquidators or an authority in respect of any particular arrangement, can receive in compensation or in part compensation for such transfer or sale, shares or other like interest in such other company for the purpose of distribution amongst the members of the company which is being wound up, or may in lieu of receiving cash, shares or other like interests or in addition thereto participate in the profits of or receive any other benefit from, the purchasing company.

## CHAP. 80.

Dissentient  
member.

14. Any sale made or arrangement entered into by the liquidators in pursuance of this section shall be binding on the members of the company which is being wound up, subject to this proviso, that if any member of the company which is being wound up who has not voted in favor of the special resolution passed by the company of which he is a member at either of the meetings held for passing the same expresses his dissent from any such special resolution, in writing, addressed to the liquidators or one of them, and left at the head office of the company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may require the liquidators to do one of the following things as the liquidators may prefer, that is to say: (1) Either to abstain from carrying such resolution into effect; or (2) to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned, such purchase money to be paid before the company is dissolved, and to be raised by the liquidators in such manner as may be determined by special resolution.

Special resolu-  
tion.

15. No special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with any resolution for winding up the company or for appointing liquidators.

Member's inter-  
est.

16. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement; but if the parties dispute about the same such dispute shall be settled by arbitration.

Arbitration.

17. For the purpose of such arbitration the liquidator shall appoint one arbitrator and the dissentient member shall appoint another, and the two arbitrators thus chosen (or in case they disagree, the county judge) shall appoint a third arbitrator.

Powers of arbi-  
trators.

18. The arbitrators thus chosen, or any two of them, or the arbitrator of one party and an arbitrator appointed by the county judge (in case of the refusal or neglect of either party to appoint an arbitrator), shall finally determine the matter in dispute.

Umpire.

19. In case of the disagreement of two arbitrators, where two only are acting, they may appoint an umpire, whose award shall be conclusive.

## LIABILITY OF CONTRIBUTORIES.

List to be settled

20. As soon as may be after the commencement of the winding up of a company the liquidator shall settle a list of contributories.

Unpaid shares.

21. Every shareholder or member of the company or his representative is liable to contribute the amount unpaid

on his share of the capital or on his liability to the company or to its members or creditors, as the case may be, under the Act, charter or instrument of incorporation of the company or under the law of this Province, and the amount which he is liable to contribute shall be deemed assets of the company and to be a debt due to the company. CHAP. 80.

22. When a shareholder has transferred his shares under circumstances which do not by law free him from liability in respect thereof, or where he is by law liable to the company or its contributories or any of them, to an amount beyond the amount unpaid on his shares, or when a member of a company, the liability of whose members is not limited by the Act, charter, or instrument of incorporation of such company, has resigned or ceased to be a member of the company at a time when the liabilities of the company are not satisfied, he shall be deemed a member of the company for the purposes of this Chapter, and shall be liable to contribute as aforesaid to the extent of his liabilities to the company or the contributories independently of this Chapter, and the amount which he is so liable to contribute shall be deemed assets and a debt as aforesaid. Transferred shares.

23. In the case of a company, the liability of whose members is not limited by the Act, charter or instrument of incorporation of such company, every member of such company at the time of the contracting of any debt or the incurring of any liability shall be liable to contribute to the payment of such debt or liability, notwithstanding he may have since ceased to be a member of such company, and notwithstanding any statute relating to the limitation of actions, provided such liability can be enforced at law or in equity, against such company. Cessation of membership.

24. The list of contributories shall distinguish between persons who are contributories in their own right and as being representatives of or liable for others. Representative contributories.

25. It shall not be necessary when the personal representative of any deceased contributory is placed on the list to add the heirs or devisees of such contributory, nevertheless such heirs or devisees may be added at any time afterwards. Liability of heirs, &c.

26. Any list so settled shall be *prima facie* evidence of the liability of the persons named therein to be contributories. List prima facie evidence of liability.

27. The list of contributories may be settled by the court, in which case the liquidator shall make out and leave at the chambers of any judge of the Supreme Court a list of the contributories of the company, and such list shall be verified by the affidavit of the liquidator, and shall so far Court may settle list.

CHAP. 80. as is practicable state the respective addresses of and the number of shares or extent of interest to be attributed to each such contributory, and distinguish the several classes of contributories; and such list may from time to time by leave of a judge of the Supreme Court be varied or added to by the liquidator.

Notice to contributories.

28. Upon the list of contributories being left at the chambers of a judge, the liquidator shall obtain an appointment from the judge to settle the same, and shall give notice in writing of such appointment to every person included in the list, and stating in what character and for what number of shares or interest such person is included in the list, and in case any variation or addition to such list is at any time made by the liquidator a similar notice in writing shall be given to every person to whom such variation or addition applies. All such notices shall be served four clear days before the day appointed to settle such list, or such variation or addition.

Settlement of list to be certified.

29. The result of the settlement of the list of contributories shall be stated in a certificate by the prothonotary of the court, and certificates may be made from time to time for the purpose of stating the result of such settlement down to any particular time or to any particular person, stating any variation of the list.

Default of representatives of deceased contributories.

30. If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum to be paid by him, proceedings may be taken for administering the personal and real estate of such deceased contributory or either of such estates, and for compelling payment thereof of the money due.

Calls on contributories.

31. The liquidators may at any time and before they have ascertained the sufficiency of the assets of the company call on all or any of the contributories, for the time being, settled on the list of contributories, to pay to the extent of their liability all or any sums the liquidators deem necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and the liquidators may, in making a call, take into consideration the probability that some of the contributories upon whom the call is made, may partly or wholly fail to pay their respective portions of the same.

Liable to arrest, imprisonment, &c.

32. Where a person's name is on the list of contributories or is liable to be placed thereon, he shall be subject, in respect to his liability and on the application of the liquidator, to arrest and imprisonment like any other debtor, and he shall for that purpose be deemed a debtor to the company and a debtor to the liquidator, and his

arrest may be ordered by the court, and his being placed in the list of contributories under this Chapter shall be deemed a judgment, and the liquidator shall be deemed a judgment creditor; and the said judgment may be enforced by writ of execution in the same manner as in ordinary judgments in the Supreme Court. CHAP. 80.

## LIQUIDATORS' DUTIES.

33. No liquidator shall employ any counsel, solicitor, or attorney-at-law without the consent of the inspectors, if any. Counsel, when allowed liquidator.

34. No liquidator or inspector shall purchase directly or indirectly any part of the stock in trade, debts or assets of any description of the estate. Liquidator not to purchase stock.

35. The liquidator shall deposit at interest in some chartered bank, to be indicated by the inspector or by the court, all sums of money which he may have in his hands belonging to the company, whenever such sums amount to one hundred dollars. Deposit in bank.

36. Every liquidator or inspector shall be subject to the summary jurisdiction of the court in the same manner and to the same extent as the ordinary officers of the court are subject to its jurisdiction, and the performance of his duties may be compelled and all remedies sought or demanded for enforcing any claim for a debt, privilege, mortgage, lien or right of property upon, in, or to any effects or property in the hands, possession, or custody of a liquidator, may be obtained by an order of the court on summary petition, and not by any suit, attachment, seizure, or other proceeding of any kind whatever, and obedience by the liquidator to such order may be enforced by such court under the penalty of imprisonment as for contempt of court or disobedience thereto, or he may be removed in the discretion of the court. Subject to order of court.

37. Such deposit shall not be made in the name of the liquidator generally, on pain of dismissal, but a separate deposit account shall be kept for the company of the moneys belonging to the company in the name of the liquidator, as such, and of the inspectors (if any), and such moneys shall be withdrawn only on the joint cheque of the liquidator and one of the inspectors, if there be any. Deposit, how made.

38. At every meeting of the contributories the liquidators shall produce a bank pass book, shewing the amount of deposits made for the company, the date at which such deposits were made, the amounts withdrawn, and dates of such withdrawal; of which production mention shall be made in the minutes of such meeting, and the absence of such mention shall be *prima facie* evidence that such pass book was not produced at the meetings. Pass book.



- CHAP. 80.** 39. The liquidator shall also produce such pass book whenever so ordered by the court, at the request of the inspectors or of a contributory, and on his refusal to do so he shall be treated as being in contempt of court.
- When to be produced. **40.** All costs, charges and expenses properly incurred in the winding up of a company under this Chapter, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims.
- Costs, &c., a first charge. **41.** In case of there being no agreement or provision fixing the remuneration of a liquidator, he shall be entitled to a commission on the net proceeds of the estate of the company of every kind which shall come to his hands, after deducting expenses and disbursements; such commission to be of five per cent. on the amount realized, and shall be in lieu of all fees and charges for his services.
- Liquidators' commission.

## MEETINGS OF CONTRIBUTORIES.

- Meeting to fill vacancies. **42.** If any vacancy occurs in the office of liquidators appointed by the company, by death, resignation, or otherwise, a general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidators, if any, or if none then by any contributory of the company.
- Special resolution. **43.** The liquidators may from time to time during the continuance of the winding up summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or extraordinary resolution, or for any other purpose they think fit.
- Notices of meetings. **44.** The liquidator shall also call meetings of the contributories whenever required in writing so to do by the inspector or five contributories, or by the court, and he shall state succinctly in the notice calling any meeting the purpose thereof.
- Where to be held. **45.** The contributories may from time to time at any meeting determine where subsequent meetings shall be held, and in the absence of such a resolution all meetings of the contributories shall be held at the office of the liquidator or of the company, unless otherwise ordered by the court.
- Publication of notice. **46.** Notice of any meeting shall, for the purposes of this Chapter, be deemed to be duly given, and the meeting to be duly held, whenever such notice is given and meeting held in manner prescribed by the Act, charter, or instrument of incorporation, or by the regulations of the company, or by the court, or notice of the meeting may be given by publication thereof for at least three weeks in the *Royal Gazette*, or by such other or additional notice as the court, or the inspector, or the company may direct, and by also, except when the court otherwise directs, addressing notices

of the meeting to the contributories within the Province, CHAP. 80.  
and to the representatives within the Province of contribu-  
tories who reside out of the Province, and the said notices  
shall be posted at least ten days before the day on which  
the meeting is to take place, the postage being prepaid by  
the liquidator.

47. No contributory shall vote at any meeting unless Voting regulated  
present personally, or represented by some person having a  
written authority (to be filed with the liquidator) to act on  
his behalf at the meeting or generally, and when a  
poll is taken reference shall be had to the number of votes  
to which each member is entitled by the Act, charter, or  
instrument of incorporation, or the regulations of the  
company.

ASSISTANCE OF THE COURT.

48. The liquidators, or any contributory of the Application for  
assistance, how  
made.  
company, may apply to the court to determine any question  
arising in the matter of such winding up, or to exercise all  
or any of the powers following, and the court, if satisfied  
that the determination of such question, or the required  
exercise of power, will be just and beneficial, may accede  
wholly or partially to such application, on such terms and  
subject to such conditions as the court thinks fit, or it may  
make such other order on such application as the court  
thinks just.

49. The court at any time after the presentation of a Proceedings  
restrained.  
petition for winding up a company, and before making an  
order for winding up the company, may restrain further  
proceedings in any action, suit, or proceeding against the  
company (other than under the Insolvent Acts in force at  
the time, or any other authority with which this Legislature  
has no jurisdiction), in and upon such terms as the court  
thinks fit.

50. The court may make an order that no suit, action Advertisement  
of order.  
or other proceeding shall be proceeded with or commenced  
against the company, except with the leave of the court  
and subject to such terms as the court may impose; but  
this section shall not apply to proceedings under any Act  
of the Parliament of Canada, under its jurisdiction in  
matters of bankruptcy and insolvency, or otherwise. A  
copy of such order shall forthwith be advertised as the  
court may direct.

51. The court may settle the list of contributories. Settlement of  
list.

52. The court may direct meetings of the contributories, Meetings direct-  
ed.  
to be summoned, held, and conducted in such manner as the  
court thinks fit, for the purpose of ascertaining their  
wishes, and may appoint a person to act as chairman of any

**CHAP. 80.** such meeting, and to report the result of such meeting to the court.

Transfer of effects,

53. The court may require any contributory for the time being settled on the list of contributories, or any trustee, receiver, banker, or agent or officer of the company, to pay, deliver, convey, surrender or transfer forthwith, or within such time as the court directs, to or into the hands of the liquidator any sum or balance, books, papers, estate, or effects, which happen to be in his hands for the time being, and to which the company is *prima facie* entitled.

Payment of moneys.

54. The court may make an order on any contributory for the time being settled on the list of contributories, directing payment to be made, in manner in the said order mentioned, of any moneys due from him or from the estate of the person whom he represents, to the company, exclusive of any moneys which he or the estate of the person whom he represents may be liable to contribute by virtue of any call made or to be made by the court in pursuance of this Chapter.

Payment into bank.

55. The court may order any contributory, purchaser, or other person from whom money is due to the company, to pay the same into any bank appointed for this purpose, in any general order made under this Chapter, or in default thereof into any bank named in the order, or into any branch of such bank, to the account of the official liquidator, instead of to the official liquidator, and such order may be enforced in the same manner as if it had directed payment to the official liquidator.

Order conclusive evidence.

56. Any order made by the court in pursuance of this Chapter upon any contributory, shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the moneys, if any, thereby appearing to be due, or ordered to be paid are due, and all other pertinent matters stated in such order, and to be taken to be truly stated as against all persons, and in all proceedings whatsoever, with the exception of proceedings taken against the real estate of any deceased contributory, in which case such order shall only be *prima facie* evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time the order was made.

Inspection of books.

57. The court may make such order for the inspection by the creditors and contributories of the company of its books and papers as the court thinks just, and any books and papers in the possession of the company may be inspected in conformity with the order of the court, but not further or otherwise.

58. The court may at any time after the commencement of the winding up of the company, summon to appear before the court or liquidator any officer of the company, or any other person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the court may deem capable of giving information concerning the trade, dealings, estate or effects of the company, and in case of refusal to appear, or answer the questions submitted, he may be committed and punished by the judge as for a contempt.

59. The court may require any such officer or person to produce any books, papers, deeds, writings, or other documents in his custody or power relating to the company.

60. If any person so summoned, after being tendered the fees to which a witness is entitled in the Supreme Court, refuses to come before the court or liquidator at the time appointed, having no lawful impediment, the court may cause such person to be apprehended and brought before the court or liquidator for examination.

61. The court or liquidator may examine upon oath any person appearing or brought before them in the manner aforesaid, concerning the affairs, dealings, estate or effects of the company, and may reduce into writing the answers of every such person, and require him to subscribe the same.

62. In any proceedings under this Chapter, the court may order a writ of *subpœna ad testificandum* or of *subpœna duces tecum* to issue, commanding the attendance as a witness of any person within the limits of Nova Scotia.

63. When any person claims any lien on papers, deeds or writings, or documents produced by him, such production shall be without prejudice to the lien, and the court shall have jurisdiction in the winding up to determine all questions relating to such lien.

64. Where, in the course of winding up any company under this Chapter, it appears that any past or present director, manager, official or other liquidator, or any officer of such company, has misapplied or retained in his own hands, or become liable or accountable for any moneys of the company, or being guilty of any malfeasance or breach of trust in relation to the company, the court may, on the application of any liquidator, or of any contributory of the company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager or other officer, and compel him or his executors or administrators to repay any

CHAP. 80. moneys so misapplied or retained, or for which he or his estate has become liable or accountable, together with interest after such rate as the court thinks just, or to contribute such sums of money to the assets of the company by way of compensation, in respect of such misapplication, retainer, malfeasance, or breach of trust, as the court thinks just.

Order author-  
izing proceedings

65. If at any time any contributory who desires to cause any proceeding to be taken, which in his opinion would be for the benefit of the company, and the liquidator under the authority of the contributories or of the inspectors, refuses or neglects to take such proceedings after being duly required so to do, such contributory shall have the right to obtain an order of the court authorizing him to take such proceeding in the name of the liquidator or company, but at his own expense and risk, upon such terms and conditions as to indemnity to the liquidator as the court may prescribe; and thereupon any benefit derived from such proceedings shall belong exclusively to the contributory instituting the same for his benefit, and that of any other contributory who may have joined him in causing the institution of such proceeding; but if before such order is granted the liquidator shall signify to the court his readiness to institute such proceeding for the benefit of the company, an order shall be made prescribing the time within which he shall do so, and in that case the advantage derived from such proceeding shall appertain to the company.

Vacancies, how  
filled.

66. If any vacancy occurs in the office of liquidator appointed by the company, by death, resignation or otherwise, the company in general meeting may fill up such vacancy. If from any cause there is no liquidator acting, either provisionally or otherwise, the court may on the application of a contributory appoint a liquidator or liquidators. The court may also on due cause shewn remove any liquidator and appoint another liquidator. When there is no liquidator the estate shall be under the control of the court until the appointment of a new liquidator.

Dissatisfied con-  
tributories.

67. Any one or more contributories, whose claims in the aggregate exceed five hundred dollars, who may be dissatisfied with the resolutions adopted or orders made by the contributories or the inspectors, or with any action of the liquidator, for the disposal of the property of the company, or any part thereof, or for postponing the disposal of the same, or with reference to any matter connected with the management or winding up of the estate, may within four clear days after the meeting of the contributories, in

case the subject of dissatisfaction is a resolution or order of CHAP. 80.  
 the contributories, or within four clear days after becoming  
 aware or having notice of the resolution of the inspectors,  
 or action of the liquidator, where such resolution or action  
 is the subject of dissatisfaction, give to the liquidator  
 notice that he or they will apply to the court on the day  
 and at the hour fixed by such notice, and not being later  
 than four clear days after such notice has been given or as  
 soon thereafter as the parties may be heard before such  
 court to record such resolution or orders. The court, after  
 hearing the inspectors, the liquidators and contributories  
 present at the time and place so fixed, may approve, rescind  
 or modify the same resolutions or orders. In case of the  
 application being refused, the party applying shall pay all  
 costs occasioned thereby, and in other cases the costs and  
 expenses shall be at the discretion of the court.

68. Any party who is dissatisfied with any order or Appeals pro-  
 vided for.  
 decision of the judge in any proceeding under this Chapter,  
 may appeal therefrom in the manner prescribed by the  
 practice and rules of the court in relation to appeals from  
 the decision of a single judge.

69. Any powers by this Chapter conferred on the Powers of court.  
 court, shall be deemed to be in addition to and not in  
 restriction of any other powers subsisting, either at law or in  
 equity, of instituting proceedings against any contributory,  
 or against any debtor of the company for the recovery of  
 any call or other sums due from such contributory or  
 debtor or his estate, and such proceedings may be instituted  
 accordingly.

#### MATTERS OF PRACTICE. .

70. The costs of proceedings under this Chapter shall Costs.  
 be taxed and allowed according to the law relating to costs  
 and fees.

71. Any application to the court for the winding up Mode of applica-  
 tion to court.  
 of a company under this Chapter shall be by petition, and  
 the petition may be presented by the company, or by any  
 contributory or contributories of the company.

72. Upon hearing the petition the court may dismiss Dismissal of peti-  
 tion.  
 the same with or without costs, or may adjourn the hearing  
 conditionally or unconditionally, and may make an interim  
 order or any other order that it deems just.

73. The Court, at any time after an order has been Stay of proceed-  
 ings.  
 made for winding up a company, may upon the application  
 by motion of any contributory, and upon proof to the satis-  
 faction of the Court that all proceedings in relation to such  
 winding up ought to be stayed, make an order staying the  
 same, either altogether or for a limited time, on such terms  
 and subject to such conditions as the Court deems fit.

## CHAP. 80.

Rules of procedure.

74. The rules of procedure for the time being as to amendments of pleadings and proceedings in the Supreme Court, shall as far as practicable apply to all pleadings and proceedings under this Chapter, and the court or liquidator before whom such proceedings are being carried on, shall have full power and authority to apply the appropriate rules as to amendments to proceedings so pending before him, and no pleading or proceeding shall be void by reason of any irregularity or default which can or may be amended or disregarded under the rules and practice of the Court.

Pleadings.

75. In every petition, application, motion, or other pleading or proceedings under this Chapter, the parties may state the facts upon which they rely in plain and concise language, and to the interpretation thereof the rules of construction applicable to such language in the ordinary transactions of life shall apply.

Books *prima facie* evidence.

76. All books, accounts, and documents of the company and of the liquidator, shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

Notices.

77. Except when otherwise provided for, a clear, judicial day's notice of any petition, motion, order, or rule, shall be sufficient, and service of such notice shall be made in such manner as a similar service in a civil suit.

## DISSOLUTION OF THE COMPANY.

Dissolution of company.

78. As soon as the affairs of the company are fully wound up, the liquidators shall make up an account, showing the manner in which such winding up has been conducted, and the property of the company disposed of; and thereupon they shall call a general meeting of the company, for the purpose of having the account laid before them, and hearing any explanation that may be given by the liquidators; the meeting shall be called by advertisement, specifying the time, place and object of such meeting; and the advertisement shall be published one month at least previously thereto. The liquidator shall make a return to the Provincial Secretary of such meeting having been held, and of the date at which the same was held, which return shall be filed in the office of the Provincial Secretary, and on the expiration of three months from the date of the filing such return, the company shall be deemed to be dissolved.

Order for dissolution.

79. Or, whenever the affairs of the company have been completely wound up, the Court may make an order that the company be dissolved from the date of such order, and the company shall be dissolved accordingly; which order

shall be reported by the liquidator to the Provincial Secretary. CHAP. 80.

80. If the liquidator makes default in transmitting to the Provincial Secretary the return mentioned in the seventy-eighth section, or in reporting the order (if any) declaring the company dissolved, he shall be liable to a penalty not exceeding twenty dollars for every day during which he is in default. Liquidator's default.

81. All dividends deposited in a bank and remaining unclaimed at the time of the dissolution of the company shall be left for three years in the bank where they are deposited, and if still unclaimed shall then be paid over by such bank with interest accrued thereon to the provincial treasury, and if afterwards duly claimed shall be paid over to the persons entitled thereto. Unclaimed dividends.

82. Every liquidator shall within thirty days after the date of the dissolution of the company deposit in the bank appointed or named as hereinbefore provided for any other money belonging to the estate then in his hands not required for any other purpose authorized by this Chapter, with a sworn statement and account of such money, and that the same is all he has in his hands; and he shall be subject on summary conviction thereof before a justice of the peace to a penalty not exceeding ten dollars for every day on which he neglects or delays such payment; and he shall be a debtor to Her Majesty for such money, and may be compelled as such to account for and pay over the same. The money so deposited shall be left for three years in the bank, and shall be then paid over with interest to the treasury of the Province, and if afterwards claimed shall be paid over to the person entitled thereto. When any company has been wound up under this Chapter and is about to be dissolved, the books, accounts and documents of the company and of the liquidators may be disposed of in such a way as the company by an extraordinary resolution directs. After the lapse of five years from the date of such dissolution no responsibility shall rest on the company or the liquidators, or any one to whom the custody of such books, accounts and documents has been committed, by reason that the same or any of them cannot be made forthcoming to any party or parties claiming to be interested therein. Deposit of funds, &c.

83. A majority of the judges of the Supreme Court from time to time shall make, frame, settle and approve of the forms, rules and regulations to be followed and observed in proceedings under this Chapter, and shall have power to amend, change and vary the same, and such forms, rules and regulations, being first published in the *Royal Gazette*, Judges to make rules, &c.



CHAP. 81. shall have the same force and effect as if they had been made and included in this Chapter. Until such forms, rules and regulations are so made and published, the practice under this Chapter shall in cases not hereinbefore provided for be the same (as nearly as may be) as under the Insolvent Acts for the time being in force in this Province.

Limitation of Chapter.

84. This Chapter shall not extend to any company or corporation whose Act of incorporation or any Act in amendment thereof contains express provisions for the mode of winding up such company or association.

## CHAPTER 81.

### OF LIBRARY ASSOCIATIONS AND INSTITUTES.

Persons intending to form Library Associations to make a declaration in duplicate. 1. Any number of persons, not less than ten, having subscribed or holding together not less than one hundred dollars in money or money's worth, for the use of their intended institution, may make and sign a declaration in duplicate of their intention to establish a Library Association, or Institute, or both, as the case may be, at some place to be named in such declaration; in which they shall also state:

Statements in declaration.

- (1.) The corporate name of the institution.
- (2.) The purpose.
- (3.) The amount of money or money's worth subscribed by them respectively, or held together for the use thereof.
- (4.) The names of those who are to be the trustees for managing its affairs.
- (5.) The mode in which their successors are to be appointed, or new members of the corporation admitted, or in which by-laws are to be made for such appointment or admission, or for any other purpose, or for all purposes; and
- (6.) Generally such other particulars and provisions as they may think necessary, not being contrary to this Chapter or to law.

One duplicate filed in office of registrar of deeds

2. One duplicate of such declaration shall be filed in the office of the registrar of deeds for the county or district by one of the subscribing parties, who shall before such registrar acknowledge the execution thereof by himself, and declare the same to have been executed by the other parties thereto either in person or by their attorneys.

Registrar to give certificate of having filed duplicate.

3. The registrar shall keep the duplicate so filed, and deliver the other to the person who filed it, with a certificate of the same having been so filed, and of the

execution having been attested before him; and such duplicate or any copy thereof certified by such registrar shall be *prima facie* evidence of the facts alleged in such declaration and certificate. CHAP. 81.

4. When the formalities aforesaid have been complied with, the persons who signed such declaration or the directors, trustees, or the office bearers and committee for the time being of any such institution, or united institutions, and their successors, shall be a body corporate and politic, and shall have the powers, rights and immunities vested in such bodies by law; with power to such corporation in their corporate name from time to time to acquire and hold to them and to their successors for the uses of such corporation any messuages, lands, tenements or hereditaments situate within this Province. Formalities complied with, members of institution to be a body corporate.

5. In case of an institute or library association (or both united) already established or in existence, the directors, trustees, or the office bearers, for the time being, may make and sign a declaration of their wish or determination to become incorporated according to the provisions of this Chapter, stating in such declaration the corporate name to be assumed by such institution or united institutions; and also with such declaration file in the manner hereinbefore provided a copy of the constitution and by-laws of such institution or united institutions; together with a general statement of the nature and amount of all the property, real or personal, held by or in trust for such institution or united institutions. (Or incorporation of association already established)

6. Any library association or institute duly incorporated and situated in any city or town having three thousand inhabitants or more may hold real property not exceeding in annual value the sum of two thousand dollars. Extent of property held by institute in town of 3,000 inhabitants.

7. Any library association or institute duly incorporated and situated in any village or town not having three thousand inhabitants may hold real property not exceeding in annual value the sum of one thousand dollars. In town not having 3,000 inhabitants.

8. In cases not mentioned in the two next preceding sections, the yearly value of real property to be held by any such corporation shall never exceed four hundred dollars. In other cases.

9. The affairs of every such corporation shall be managed by the directors or trustees thereof for the time being, appointed as hereinafter, or by any by-law of the corporation provided, who, or a majority of whom, may exercise all the powers of the corporation and act in its name and on its behalf, and use its seal, subject always to Affairs of corporation managed by directors or trustees.

**CHAP. 81.** any provisions touching the exercise of such powers in the declaration aforesaid or in any by-law of the corporation.

**Making of by-laws.** 10. Such trustees or a majority of them may make by-laws binding the members and officers of such corporation, and all others who agree to be bound by them, for all purposes relative to the affairs and business of the corporation; except as to matters touching which it is provided by the declaration that by-laws shall be made in some other manner.

**Election of officers.** 11. The members of every such corporation may at their annual meeting, to be held on the day appointed by a by-law of the corporation, choose from among themselves a president, and may appoint (except it be otherwise provided in the declaration and by-laws) a librarian, treasurer, secretary, lecturer, and such other officers and servants of the corporation as are required, and when necessary fix and pay their remuneration, and may also choose a board of directors and trustees of such corporation, who shall hold office for one year or such further time as may be hereafter limited or permitted.

**Election of trustees.** 12. A failure to elect trustees on any day appointed for that purpose by the declaration or by any by-laws shall not cause the dissolution of the corporation; but the trustees then in office shall remain in office until their successors are elected, which may be (if no other provision be made therefor by the declaration or by-laws) at any meeting of the members of the corporation at which a majority of such members are present, in whatever way such meeting may have been called.

**Fine for contravening by-laws.** 13. Every such corporation may by its by-laws impose a fine, not exceeding four dollars, on any member contravening the same, or on any person not being a member of the corporation, who has in writing agreed to obey the by-laws for the contravention whereof it is imposed.

**Recovery of fines and subscriptions.** 14. Any such fine if incurred, and any subscription or other sum of money which any member may have agreed to pay to the corporation for his subscription to the funds of the corporation for any certain time, or for the loan of any book or instrument, or the right of entry to the rooms of the corporation, or of attending any lectures, or for any other privilege or advantage afforded him by such corporation, may be recovered by the corporation by action in any court having jurisdiction in civil matters to the amount, on allegation and proof of the signature of the defendant to some writing by which he has undertaken to pay such subscription or to obey such by-law, and of the breach of such undertaking, which breach as regards a promise to pay any sum of money shall be presumed until

the contrary is shown, and as regards the contravention of CHAP. 82.  
any such by-law may be proved by the oath of any one  
credible witness.

15. In any action to which the corporation may be a party any member or officer of the corporation shall be a competent witness, and a copy of any by-law bearing the signature of the defendant, or bearing the seal of the corporation and the signature of some person purporting to have affixed such seal by authority of the corporation, shall be *prima facie* evidence of such by-law.

In any suit of corporation, members competent witnesses.

16. Any fine incurred may be recovered in like manner as a subscription or other sum of money; and all fines so recovered shall belong to the corporation for the use thereof.

Recovery of fines.

17. Any such corporation may if so stated in the declaration be at the same time an institute and library association, or either of them, and their business shall accordingly be the ordinary and usual business of a library and scientific institute or of a library association, or both, as the case may be, for the proper and convenient carrying on of such business or objects, and their funds and property shall be appropriated and used for purposes legitimately appertaining to such business and objects, and for no other.

Corporation may be at same time institute and library association.

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## CHAPTER 82.

### OF INCORPORATED SURETIES FOR OFFICERS.

1. The Governor may by Order-in-Council direct that whenever any public officer is required to give security for the due fulfilment of his duty, or of any obligation undertaken towards the Crown, the bond or policy of guarantee of any incorporated or joint stock company, incorporated and empowered to become the sureties of public officers in certain cases named by such Order-in-Council, may be accepted as such security upon such terms as shall be determined by the Governor-in-Council.

Governor-in-Council may accept security of incorporated company, &c.

2. Notwithstanding anything in any Act of the Legislature of this Province passed with respect to benevolent societies, building societies, or to any incorporated insurance company, municipal or other corporation, the bonds

Such securities may be accepted from other than public officers.

CHAP. 82. or policies of guarantee of any such assurance society, or of any incorporated or joint stock company, formed and empowered for like purposes, may be accepted instead of, or in addition to, the bond or security of any officer or servant of such institution or corporation, in all such cases where by the provisions of such Act, or of any by-law or rule of such institution or corporation, such officer or servant is required to give security, either by himself or by himself or a surety or sureties, and where the parties directed or authorized to take such security see fit to accept the bond or policy of any such assurance society or other like company, and approve the terms and conditions thereof; and all the provisions in any such Act relating to such security to be given by any such officer or servant or his sureties shall apply to the bonds and policies of guarantee of any such assurance society, or any other such like company, which may be taken instead of, or in substitution for, any existing securities, if the parties directed or authorized as aforesaid see fit; whereupon such existing securities shall be delivered up to be cancelled.

Company's bonds  
may be accept-  
ed.

3. Notwithstanding the provisions of any Act of the Legislature of the Province of Nova Scotia the bonds or policies of guarantee of any such incorporated company, empowered to grant guarantee bonds or policies for the integrity and faithful accounting of public officers or others, or for like purposes, as shall be approved for this purpose by the Governor-in-Council, may be accepted by any judge or other person authorized or required to take security for the due performance of any duty, instead of or in addition to the bond or security of a surety or sureties, if such judge or other person sees fit to accept such bond or policy as aforesaid, and approves the conditions and terms thereof; and all the provisions of any such Act relating to the security to be given by any person to whom any duty is committed, or his security or securities, shall apply to the bonds or policies of guarantee of such company as aforesaid.

Provision as to  
interim receipt.

4. The interim receipt of such company may be accepted in lieu of the formal security, but the formal security shall be completed within one month.

## CHAPTER 83.

## OF PARTNERSHIPS AND THE REGISTRATION OF PARTNERSHIPS.

1. All persons associated in partnership for trading, manufacturing, mining or other purposes, shall cause to be delivered to the registrar of deeds of the county or district in which they carry or intend to carry on business a declaration in writing signed by the several members of such co-partnership. If however any of the said members are absent from the place where they carry or intend to carry on business at the time of making the declaration, then the declaration shall be signed by the members present, in their own names and also for their absent co-members, under their special authority to that effect, and such special authority shall be at the same time filed with the registrar of deeds, and annexed to the declaration.

Declaration of partnership to be registered.

Provisions in respect of absent co-members.

2. When the persons so associated are resident out of the Province, and are doing business in the Province by an attorney, agent, or other representative, such declaration may be signed by such attorney, agent, or other representative, under special authority of the persons so associated, and such special authority shall be annexed to the declaration and filed at the same time with the registrar of deeds, and the form of the declaration shall be modified accordingly.

Non-resident partnership doing business by an agent, &c.

3. The said declaration shall be in the form or to the effect of schedule A to this Chapter, and shall contain the names, surnames, additions and residences of each and every partner as aforesaid, and the name, style, or firm under which they carry on or intend to carry on such business, and shall state also the time during which the partnership has existed, and declare that the persons therein named are the only members of such co-partnership.

Requisites of declaration.

4. The said declaration shall be filed within three months next after the formation of such partnership.

Time of filing declaration.

5. A similar declaration shall in like manner be filed when and so often as any change or alteration takes place in the membership of such partnership, or in the name, style or firm under which they intend to carry on business, or in the place of residence of each member of said firm, and every new declaration shall state the alteration in the partnership.

Declaration, when change in partnership.

6. The allegations made in the declarations aforesaid shall not be controvertible as against any party by any person who has signed the same, nor as against any party not being a member of the partnership by any person who

Allegations when not controvertible.

CHAP. 83. has signed the same, or who was really a member of the partnership therein mentioned at the time such declarations were respectively made.

Liability of partners.

7. Until a new declaration is made and filed by him, or by his co-partners, or the attorney, agent, or representative of such non-resident co-partner, no such signer or non-resident co-partner, or any of them as aforesaid, shall be deemed to have ceased to be a partners; but nothing herein contained shall exempt from liability any person who being a partner fails to declare the same as already provided, and such person may, notwithstanding such omission, be sued jointly with the partners mentioned in the declaration, or they may be sued alone, and if judgment is recovered against them, any other partner or partners may be sued jointly or severally, in an action on the original cause of action upon which such judgment was rendered; nor shall anything in this Chapter be construed to affect the rights of any partners with regard to each other, except that no such declaration as aforesaid shall be controverted by any signer thereof.

Service of process.

Service of process on the attorney, agent, or representative of such non-resident co-partners shall be deemed good service on the said co-partner or co-partners; provided always that the said attorney, agent, or representative may apply to the judge or the court and obtain time to consult his principal. The attorney, agent, or representative of such non-resident co-partner or co-partners shall file with the registrar of deeds his authorization to act as such attorney, agent, or representative, verified under oath, and certified before a notary public.

Declaration of dissolution of partnership.

8. Upon the dissolution of any partnership, any or all of the persons who composed such partnership may sign a declaration certifying the dissolution of the partnership. Such declaration may be in the form of schedule B to this Chapter.

Action, how brought if no declaration filed.

9. If any persons are associated as partners for the purpose of trade or other business, and no declaration is filed under this Chapter with regard to such partnership, then any action which might be brought against all the members of the partnership may also be brought against any one or more or them, as carrying on or as having carried on business jointly with others, without naming such others in the writ or declaration under the name and style of their said co-partnership firm; and if judgment be recovered against him or them, any other partner or partners may be sued jointly or severally on the original cause of action on which such judgment is rendered. If

any such action be founded on any obligation or instru- CHAP. 83.  
 ment in writing in which all or any of the partners bound  
 by it are named, then all the partners named therein shall  
 be made parties to such action; and any judgment rendered  
 against any member of such existing co-partnership for a  
 partnership debt or liability may be executed by process  
 of execution against all and every the partnership stock,  
 property and effects in the same manner and to the same  
 extent as if such judgment had been rendered against  
 such co-partnership.

10. Every person who is engaged in business for trading, <sup>Person using</sup>  
 manufacturing or mining, or other purposes, and who is not <sup>business style to</sup>  
 associated in partnership with any other person or persons, <sup>file declaration.</sup>  
 but who uses as his business style some name or designa-  
 tion other than his own name, or who in such style uses  
 his own name with the addition of "and company;" or  
 some other word or phrase indicating a plurality of members  
 in the firm, shall cause to be delivered to the registrar of  
 deeds of the county or district in which such person carries  
 on or intends to carry on business, a declaration in writing  
 signed by such person. And in case such person is resident  
 out of the Province, and carries on business by an attorney,  
 agent, or other representative in the Province, such  
 declaration may be made by such agent, attorney or  
 representative, under special authority, which shall be  
 filed with and at the same time as the declaration.

11. Such declaration shall contain the name, surname, <sup>What declaration</sup>  
 addition, and residence of the person making the same, <sup>shall contain.</sup>  
 and the name, style, or firm under which he carries on or  
 intends to carry on business, and shall also state that no  
 other person is associated with him in partnership; and in  
 the case of a person residing out of the Province, and  
 doing business in the Province by an agent, attorney, or  
 other representative, the declaration shall state in addition  
 with certainty the street and number of his place of  
 residence or business.

12. Such declaration shall be filed within three months <sup>Time of filing.</sup>  
 of the time when such style is first used.

13. Every member of any partnership, and every <sup>Forfeiture for</sup>  
 person doing business in the manner described in the <sup>non-compliance</sup>  
 tenth section of this Chapter who fails to comply with the <sup>with Chapter.</sup>  
 requirements of this Chapter, shall forfeit the sum of not  
 less than twenty nor more than one hundred dollars, to be  
 recovered before any court of competent jurisdiction by  
 any person suing as well in his own behalf as on behalf of  
 Her Majesty; and half of such penalty shall belong to the  
 Crown for the uses of the county or district, and the other  
 half to the party suing for the same, unless the suit is



**CHAP. 83.** brought, as it may be, on behalf of the Crown only, in which case the whole of the penalty shall belong to Her Majesty for the uses aforesaid.

Registrar to record declaration.

14. It shall be the duty of the registrar of deeds to enter all declarations made under this Chapter, in the order in which the same are received, in a book to be kept by him for that purpose, which shall at all times during office hours be open to the inspection of the public gratuitously; and for registering each such declaration the registrar of deeds shall be entitled to receive from the person filing the same the sum of twenty-five cents if it does not contain more than one hundred words, and at the rate of ten cents per hundred words for all above the number of one hundred.

Registrar to keep two index books.

15. It shall be the duty of each registrar to keep two alphabetical index books of all declarations delivered to him, in pursuance of the provisions of this Chapter.

Form of "Firm Index Book."

16. In one of such books, hereinafter called the "Firm Index Book," the registrar shall enter in alphabetical order the style of the respective firms in respect to which declarations have been delivered to him, and shall place opposite such entry the names of the person or persons composing such firm, and the date of the receipt by him of the declaration, in the manner shown in the form of "Firm Index Book" given in schedule C to this Chapter.

Form of "Individual Index Book."

17. In the second of such books, hereinafter called the "Individual Index Book," the registrar shall enter in alphabetical order the names of the respective members of each of such firms, and shall place opposite such entry the style of the firm of which such person is a member, and the date of the receipt of the declaration, in the manner shown in the form of "Individual Index Book" given in schedule D to this Chapter.

Registrar's fees.

18. The registrar of deeds shall be entitled to charge for searches the following fees and no more:

For searching in "Firm Index"—each firm ten cents.

For searching in "Individual Index"—each name ten cents.

For each certificate when required—twenty-five cents.

Names of partners to be on bill heads, &c.

19. In all cases where a firm name is used the name or names of the person or persons composing the firm shall be distinctly written or printed on all the bill heads and letters made or issued by the firm.

Not to apply to limited partnerships.

20. Nothing in the foregoing provisions of this Chapter shall be held to apply to cases arising under the provisions hereinafter contained as to limited partnerships.

21. In cases of partnership where two partners only are concerned, and their partnership shall have terminated, either of them may file a petition in the Supreme Court stating the facts respecting their dealings, and praying the aid of the court. A writ of summons shall thereupon issue against the partner complained of, in the usual manner.

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When co-partnership terminated, proceedings in Supreme Court.

22. A copy of the petition shall be served on the partner complained of at the time of the service of the summons.

Copy of petition, &c., to be served.

23. On the return of the summons, if it shall be shewn to the court that the partnership consisted of two persons only, the court shall by rule direct each partner to select one fit person as an arbitrator between them.

Court may order arbitrators.

24. If the partners do not within the time specified by the court select two such persons, the court shall appoint two persons to act as arbitrators.

Court may appoint arbitrators where parties neglect.

25. The two persons so appointed shall select one other person, and they with such person shall be arbitrators to examine and settle the partnership dealings.

Arbitrators shall appoint a third person.

26. The arbitrators before commencing such examination shall make before a judge or commissioner the following affidavit, which shall be filed in the Prothonotary's office.

Arbitrators to be sworn

We A. B., C. D., and E. F., do hereby solemnly swear honestly and fairly to settle the partnership accounts and dealings of G. H., and J. L., to the best of our knowledge and ability.

Form of oath.

Sworn at ——— before me this ——— day of ——— 18—.

G. H., J. P.

A. B.

C. D.

E. F.

27. The arbitrators shall then order the production of all books, papers and accounts, relative to the partnership dealings, and shall appoint such times and places as may appear expedient for the investigation of the partnership dealings and the examination of the partners and their witnesses. If either of the partners after due notice shall fail to attend, the arbitrators shall proceed *ex parte*.

Mode of proceeding by arbitrators prescribed.

28. Witnesses shall be summoned to attend before the arbitrator by subpoena in the usual form, and if upon being duly summoned they shall neglect to attend and give evidence, they shall be liable to the same penalties as witnesses are subject to who neglect to attend the Supreme Court on subpoena; and the Supreme Court on application to them for that purpose shall enforce the same.

Power to enforce attendance of witnesses.

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29. The arbitrators shall examine the partners and their witnesses upon oath, to be administered by any one of the arbitrators, and shall make an award in favor of such party as they or two of them shall find justly entitled thereto, which shall be filed in the prothonotary's office; and judgment shall be entered for the amount thereof, with or without costs, as directed by the arbitrators in their award, at the next term, if no sufficient objection be made thereto.

Parties and witnesses to be examined; award, how made; judgment, how entered.

30. Execution may be issued on such judgment in the usual course, and the arbitrators or any two of them shall have power to direct the costs of the proceedings, including reasonable compensation for their services, to be taxed and allowed by the court, to be paid by either of the partners, and in such manner as the arbitrators or any two of them shall direct; and the court shall enforce such payment by attachment or otherwise.

Execution to issue; costs and expenses, from whom and how recoverable.

31. Neither of the partners shall after such adjudication commence any proceedings in the Supreme Court touching the partnership dealings, and the judgment of the Supreme Court under the above provisions shall be final. In proceedings in the Supreme Court for the settlement of partnership dealings under this Chapter, a judge at chambers may make any order therein, subject to appeal to the court in term.

## LIMITED PARTNERSHIPS.

Judgment when entered shall be final.

32. Two or more persons may enter into and form limited partnerships for the transaction of mercantile, mechanical, or manufacturing business, upon the terms, with the rights and powers and subject to the conditions and liabilities hereinafter prescribed. Nothing herein shall authorize any such partnerships to engage in any banking operation, or to become insurers upon any marine risk, or upon loss by fire, or upon any life. Such partnerships may consist of one or more persons called general partners, who shall be responsible as general partners now are, and of one or more persons, who shall contribute in actual cash payments a specific sum as capital to the common stock, called special partners. Special partners shall not be liable for the debts of the partnership beyond the fund so contributed by them to the capital, except in cases hereafter mentioned. The general partners only shall be authorized to transact the business of the partnership and bind the same by the signature of the partnership name or otherwise.

Limited partnerships, formed. Objects.

33. Persons desirous of forming such partnerships shall, before the same shall go into operation, make and severally sign a certificate containing the name of the firm under which such partnership is to be conducted, the nature of the business to be transacted, the names of all the partners interested therein, distinguishing which are general and which special partners, and their respective places of residence, the amount of capital which each special partner shall have contributed to the common stock, the period at which the partnership is to commence and at which it will terminate. Such certificate shall be acknowledged by the several persons signing the same before a judge of the Supreme or County Court or justice of the peace; and such acknowledgment shall be certified in writing on such certificate by the person before whom the same is made. The certificate so acknowledged and certified shall be filed in the office of the registrar of deeds of the county or district where the principal place of business of the partnership shall be situated, and shall be recorded by him at large in a book to be kept for that purpose, open to public inspection; and if the partnership shall have places of business situated in different counties or districts, a transcript of the certificate and of the acknowledgment thereof, duly certified by such registrar, shall be filed and recorded in like manner in the office of the registrar of every such county or district.

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Certificates and preliminary proceedings in case of limited partnerships.

34. An affidavit of one or more of the general partners and also of one or more of the special partners shall also at the same time be filed in the same office, stating that the sums specified in the certificate to have been contributed by each of the special partners to the common stock, have been actually and in good faith paid in cash; and no such partnership shall be deemed to have been formed until a certificate shall have been made, acknowledged, filed and recorded, and an affidavit filed as above directed; and, if any false statement be made in such certificate or affidavit, all persons interested in such partnership shall be liable as general partners.

Certificates to be verified under oath.

35. The terms of every such partnership when registered shall immediately be published at least six weeks in the *Royal Gazette* and one other newspaper published in Halifax, and by handbills posted up in some public places in the township in which the business of the partnership shall be carried on. If such publication be not so made, such partnership shall be deemed general. Affidavits taken before a justice, of the publication of such notice by the printers of newspapers who shall have published the same, and by the persons who shall have posted the

Publication in newspapers and by handbills.

**CHAP. 83.** handbills, may be filed with the registrar with whom the certificate of the partnership shall have been filed, and shall be evidence thereof.

Renewals of limited partnerships, how provided for.

36. Every renewal or continuance of any such partnership beyond the time originally fixed for its duration shall be certified, acknowledged and recorded, and an affidavit of a general and special partner made and filed, and notice given in the manner herein required for its original formation; every such partnership otherwise renewed or continued shall be deemed a general partnership.

Alterations in business to constitute partnership general, unless in case of renewal.

37. Every alteration made in the names of the partners, the nature of the business, or the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership; and every such partnership carried on after any alteration shall be deemed a general partnership, unless renewed as a special partnership according to the provisions of the foregoing section.

Limited partnerships, under what names conducted.

38. The business of the partnership shall be conducted under a firm in the names of the general partners only, without the addition of the word company or any other general term; and any special partner whose name shall be used in such firm with his privity shall be deemed a general partner.

Actions to be in names of general partners.

39. Actions and suits in relation to the business of the partnership may be brought and conducted by and against the general partners, as if there were no special partners.

Regulations as to capital stock and distribution of profits.

40. No part of the sum contributed by a special partner to the capital stock shall be withdrawn by him or paid or transferred to him in the shape of dividends, profits or otherwise, at any time during the continuance of the partnership; but a partner may annually receive lawful interest on the sum so contributed by him, if payment thereof shall not reduce the original capital; and if after the payment of such interest any profit shall remain to be divided, he may also receive his portion of such profit; but if it shall appear that by the payment of interest or profits to any special partner the original capital has been reduced, the partner receiving the same shall restore the amount necessary to make good his share of capital, with interest.

Special partners may advise, but shall not transact business for partnership.

41. A special partner may from time to time examine into the state and progress of the partnership concerns, and may advise as to their management, but he shall not transact any business on account of the partnership, nor be employed for that purpose as agent, attorney, or otherwise; and if he shall interfere contrary to these provisions he

shall be deemed a general partner. General partners shall CHAP. 83.  
be liable to account to each other and to the special partners  
for their management of the concern, as other partners now  
are.

42. A partner guilty of any fraud in the affairs of such partnership shall be liable civilly to the party injured to the extent of the damage. Liability of partner for fraud.

43. Every sale, assignment, or transfer of any of the property or effects of such partnership, or of a general or special partner, made by such partnership or a general or special partner, when insolvent or in contemplation of insolvency, with intent of giving a preference to any creditor of such partnership or insolvent partner over other creditors of such partnership, and every warrant of attorney executed, and every judgment confessed, lien created, or security given by such partnership, or general or special partner, under the like circumstances and with the like intent, shall be void, as against the creditors of the partnership. A special partner who shall violate any provision of this Chapter, or concur in, or assent to any such violation by the partnership, or by any individual partner, shall be liable as a general partner. Preferential assignment void as against creditors

44. In case of the insolvency or bankruptcy of the partnership, no special partner shall, under any circumstances, be allowed to claim as a creditor, until the claims of all other creditors of the partnership are satisfied. Creditors' claims preferred.

45. No dissolution of such partnership by the acts of the parties shall take place previous to the time specified in the certificate of its formation or in the certificate of its renewal, until a notice of such dissolution shall have been filed and recorded in the registrar's office in which the original certificate was recorded, and published once in each week for four weeks in the *Royal Gazette*, and in some other newspaper printed in each of the counties where the partnership may have places of business. Dissolution, now effected.

#### SURETIES TO OR FOR FIRMS.

46. No promise made to answer for the debt, default, or miscarriage of another, made to a firm consisting of two or more persons, or to a single person trading under the name of a firm, and no promise to answer for the debt, default, or miscarriage of a firm, consisting of two or more persons, or of a single person trading under the name of a firm, shall be binding on the person making such promise in respect of anything done or omitted to be done after a change shall have taken place in any one or more of the persons constituting the firm, or in the person trading under the name of a firm, unless the intention of the Sureties to or for firms not answerable after change in partnership.

CHAP. 83. parties that such promise shall continue to be binding notwithstanding such change shall appear either by express stipulation, or by necessary implication from the nature of the firm or otherwise.

Not to conflict  
with Dominion  
legislation.

47. Nothing in this Chapter shall be construed to contravene or conflict with any legislation (*intra vires*) of the Parliament of the Dominion of Canada.

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SCHEDULES.

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A.

*Declaration of Co-Partnership.*

Province of Nova Scotia, }  
County of ———. }

We, ———, of ———, in ———, (*occupation*) and ———, of ———, in ———, (*occupation*) hereby certify:

1. That we have carried on and intend to carry on trade and business as ———, at ———, in partnership under the name and firm of ———, or I, (*or we*) the undersigned of ———, in ———, hereby certify that I (*or we*) have carried on and intend to carry on trade and business as ———, at ———, in partnership with C. D. ——— of ———, and E. F. ———, of ———, (*as the case may be.*)

2. That the said partnership has subsisted since the ——— day of ———, one thousand eight hundred and ———.

3. And that we (*or I*), (*or we*) and the said C. D. and E. F. ———, are and have been since the said day the only members of the said partnership.

Witness our hands at ———, this ——— day of ———, one thousand eight hundred and eighty ———.

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B.

*Declaration of Dissolution of Partnership.*

Province of Nova Scotia, }  
County of ———. }

I, ———, formerly a member of the firm carrying on business as ———, at ———, in the County of ———, under the style of ———, do hereby certify that the said partnership was on the ——— day of ———, dissolved.

Witness my hand at ———, the ——— day of ———, one thousand eight hundred and eighty ———.

## C.

*Firm Index Book.*

Style of Firm.	Names of Persons composing the Firm.	Date of Filing Declaration.
John Smith & Co.	John Smith, William Brown, Charles Robinson.	July 1, 1883.

## D.

*Individual Index Book.*

Name of Individual.	Style of Firm of which a Member.	Date of Filing Declaration.
George Wilson.	Geo. Wilson & Co.	July 1, 1883.





## PART II.

### OF PROPERTY, AND THE DOMESTIC RELATIONS.

#### TITLE XIX.

##### OF REAL PROPERTY, AND THE ALIENATION THEREOF.

###### CHAPTER 84.

###### OF THE REGISTRY OF DEEDS AND ENCUMBRANCES AFFECTING LANDS.

1. The Governor-in-Council may appoint a registrar of deeds for every county in the Province, and for every district in which such appointments are now made. Such registrar may, with the approbation of the Governor-in-Council, appoint a deputy, who may perform all the duties of the registrar, and for all whose acts the registrar and his sureties shall be responsible.

Registrars of deeds, how appointed; deputies, how appointed in certain cases.

2. Fire proof safes shall be provided in the several counties and districts, for the preservation of the records, books, and papers of the registry.

Fire proof safes to be provided.

3. The municipal council shall provide for the custody and safe keeping of the books of registry, and see that they with the indexes are placed and kept in good and efficient condition; and shall assess upon the municipality with the municipal rates such sums as may be necessary from time to time in the premises.

Provisions for safe keeping, &c., of books of registry.

4. No registrar shall enter upon the duties of his office until he shall have given bond to Her Majesty, with such sureties and to such amount and in such form as the Governor-in-Council may direct, for the faithful performance of the duties of his office, and the indemnifying of all parties who may be injured by his default or misconduct, nor until he shall have satisfied the Governor-in-Council that he has provided a suitable place for the custody of all deeds, papers, and books of registry, which may come to his charge or keeping.

Bond to be given.

## CHAP. 84.

Books of registry, how provided, their kind and quality.

5. Every registrar shall furnish well bound books, of a kind to be approved of by the Governor-in-Council, as suitable for the registry of deeds and encumbrances affecting lands, in which books such encumbrances and deeds shall be registered.

Double indexes of books of registry kept.

6. A double index to the books of registry shall be made and kept by every registrar, including in case of deeds the names of all the grantors and grantees, and in case of judgments and attachments, the names of all the plaintiffs and defendants.

Double indexes of books of entry kept.

7. A double index shall be made and kept in like manner by every registrar, of all deeds proved and lodged in his office, and of all dockets of judgments and attachments lodged therein; in which every deed shall be entered so soon as it is proved and lodged, and every docket of judgment or attachment when lodged.

Deeds, &c., recorded where lands lie.

8. All deeds, judgments, and attachments affecting lands shall be registered in the office of the county or district in which the lands lie.

Deeds copied so as to be transcripts, plans entered in books.

9. All deeds shall be copied into the books of registry, so as to be as near as possible transcripts of the originals; and copies of any plans and schedules annexed shall likewise be entered in the books.

Deeds, how proved within Province.

10. Deeds within the Province may be proved, first, upon the oath of one of the subscribing witnesses to the due execution thereof by the parties executing the same; or, secondly, upon the personal acknowledgment by the parties under oath of the due execution thereof.

Oaths administered by registrars, judges, or justices of peace; certificate to shew date.

11. Such oath may be administered by the registrar of the county or district, and shall be so certified upon the deed; or it may be administered by a judge of the Supreme Court, or a justice of the peace, or by any other registrar, who shall sign a certificate thereof, declaring the date of the attestation on the deed, and the same shall be registered thereupon along with such certificate.

Provisions in case of death or absence of subscribing witnesses.

12. In case all the subscribing witnesses to the execution of a deed by all or any of the parties thereto, shall be dead or absent from the Province, the registrar shall register the deed upon sufficient proof of such death or absence, and of the handwriting of any one of the subscribing witnesses thereto, or of the handwriting of the party or parties who have executed the same, to be made before him or any other registrar or a judge of the Supreme Court, upon oath. Such oath to be endorsed upon the deed or annexed thereto and registered therewith.

Deeds, how proved out of Province.

13. Deeds may be proved out of the Province, as well in foreign countries as in the British dominions, by the oath of a subscribing witness or the acknowledgment of

the parties under oath, as in the tenth section. Such oath, CHAP. 84.  
 to be administered by a commissioner appointed to take affidavits without the Province, by a judge of any court of record, by the mayor of any city, by a justice of the peace, or by a notary public, residing respectively at or near the place where the deed is proved, and such attestation with the date, shall be certified in writing on the said deed by such public functionary; and in the case of such oath being taken before a justice of the peace, his certificate shall be authenticated under the hand and seal of a notary public; and where a deed is proved in a foreign country, the oath may be administered by, and the attestation with the date, certified under the hand and seal of, any public minister, ambassador or consul, from the court of Great Britain, or vice-consul, residing at or near the place where the deed is proved.

14. Where a deed shall have been duly proved and lodged, or the docket of a judgment, or the copy of a writ of attachment with the description and appraisement, duly lodged as above for registry, the time when the same shall have been so proved or lodged shall be accounted the date of the registry of such deed, judgment, or attachment, respectively; and the same shall be registered in the same order in which they were so lodged or proved; and the registrar shall certify under his hand on every deed, docket, writ, or other document recorded by him, the date of registry as well as the letter or number of the book, and the numbers of the pages containing the registry.

Deeds, &c., duly proved and lodged for registry, held registered from time of being lodged.

15. The registry of a deed executed by virtue of a power of attorney shall not be valid unless such power or a deed subsequently confirming the authority given thereby, shall be registered in the office of the county or district where the lands lie.

When deed is executed under power of attorney, power must be registered.

16. Process of subpoena may be issued out of the Supreme Court as in ordinary cases, and with the necessary variation in form, to compel the attendance of any witness to, or the production of, any deed for proof thereof that the same be registered; and the court or a judge shall have the like power to punish any disobedience to such subpoena in the same manner and to the same extent as in other cases; but no witness shall be compelled to produce under such subpoena any deed which he would not be compelled to produce on trial.

Subpoena may issue to compel attendance of witness, or the production of deed for registry.

17. The certificate of registry endorsed on any deed, docket of judgment, or attachment, and signed by the registrar, shall be taken and allowed in all courts as evidence of the registry.

Certificate of registry to be received in evidence.

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Deeds to have priority from date of registry.

Mortgage, &c., shall not be tacked.

Mortgages, how released.

Judgments to bind lands from date of registry.

Dockets of judgments, their contents, how registered.

Writs of attachment; lands how bound thereby; how registered.

Judgments and attachments, how discharged.

18. Deeds or mortgages of lands duly executed but not registered shall be void against any subsequent purchaser, or mortgagee for valuable consideration, who shall first register his deed or mortgage of such lands.

19. No mortgage, judgment, or other encumbrance affecting lands, shall have any priority or effect by reason of being held by or vested in the same person with another mortgage or encumbrance of prior date and registry.

20. Mortgages shall no longer be discharged by certificate of release, but the release itself shall refer to the registry of the mortgage, and need not contain the description of the premises at full length; and the same shall be recorded like other deeds, and a marginal note thereof shall be made by the registrar, without further fee, on the book of registry of the mortgage referring to the registry of the release.

21. A judgment duly recovered and docketed shall bind the lands of the party against whom the judgment shall have passed, from and after the registry thereof in the county or district wherein the lands are situate, as effectually as a mortgage, whether such lands shall have been acquired before or after the registering of such judgment; and deeds or mortgages of such lands, duly executed but not registered, shall be void against the judgment creditor who shall first register his judgment.

22. The docket of a judgment to be registered shall contain the names of the parties, the amount recovered, the signature of the judge, and the time of signing; and a copy of such docket, certified under the seal of the court and the hand of the prothonotary where the judgment was recovered, being lodged for registry, shall be entered in the books without further proof.

23. Lands levied upon under writ of attachment shall be bound thereby only from the time that a true copy of the writ and of the description and appraisal of the lands, certified by the sheriff or his deputy, under his hand, shall be lodged for registry in the county or district where the lands lie; which copy shall be recorded without further proof, and shall continue to bind the lands until thirty days after final judgment signed in the cause.

24. Judgments and attachments so entered shall be discharged by an entry on the margin of the registry thereof, to be made by the registrar upon the filing of a release duly acknowledged, or proved by a subscribing witness, to have been executed by the parties by whom the judgment was obtained, or of a certificate under the seal of the court and the hand of the prothonotary that the

judgment has been satisfied, or the suit in which the attachment was issued discontinued or set aside. CHAP. 84.

25. Leases of land for a term exceeding three years shall be void against any subsequent purchaser, mortgagee for valuable consideration, or judgment creditor, unless such leases shall have been previously registered, and a reasonable rent reserved in good faith therein. Leases for more than three years registered.

26. Grants of land made after the thirty-first day of March, 1854, shall not be recorded in the office of the Provincial Secretary; but instead thereof, shall be recorded in the office of registry of deeds of the county in which the lands lie. Future grants of land recorded in registry of deeds.

27. The duplicate originals of grants kept in the Crown Land office, signed by the Governor, shall hereafter be signed also by the Provincial Secretary. Duplicate originals of grants signed by Governor and Provincial Secretary

28. Books similar to those in use in the Secretary's office for the registry of grants shall be furnished to the various registrars of deeds throughout the Province; and grants when completed shall be transmitted, with a duplicate plan, by the Attorney-General to the registrars of deeds, who shall record the same in the books so furnished, and attach thereto the duplicate plan, and shall keep an index to the records thereof in the name of each grantee, and shall be entitled to receive a fee of fifty cents for each grant so recorded, payable by the grantee or grantees at the time of the entry of the grant for registry. Separate books for grants furnished to registrars; and grants in duplicate to be forwarded.

29. In the county of Halifax the registrar of deeds shall keep as many contemporaneous registry books as he may find necessary to enable him to register without delay the deeds and certificates presented for registration; and he shall not be obliged to record in one book the deeds and certificates in the order in which they are presented. Fees.

30. The plans of partition of any township which, on the execution of any writ of partition, were returned to the office of the prothonotary at Halifax, shall be transmitted to the registrars of deeds of the counties in which such townships are situate; such plans shall be certified by the prothonotary at Halifax to be the original plans so returned. Registrar at Halifax may keep contemporaneous books.

31. In all the counties except Halifax the registry books shall be kept at all times, except when in actual use or when required in any court for the purposes of justice, in the safes provided for the office; and any registrar of deeds who shall offend against this provision shall, on summary conviction before two justices or a stipendiary or police magistrate, incur a penalty of eighty dollars for each offence, and on a second conviction shall be ever after incapable of holding the office of registrar of deeds in any county or district of this Province. Plans of partition of townships.

Registry books to be kept in safes, except in Halifax.

Penalty.

## CHAP. 85.

Deeds registered on declaration made in Great Britain and Ireland, and duly attested.

32. Deeds may be registered on declaration and acknowledgment heretofore made or hereafter to be made in Great Britain and Ireland before the judge of a court of record, or the mayor or recorder of a city or borough, with the date of the declaration or acknowledgment certified and expressed, attested under the seal of a court of record or of a city or borough.

Declarations made under Imperial Act, 5 and 6 Wm. IV., Cap. 62, shall have same effect as if authenticated under oath.

33. Declarations now or hereafter made in conformity with, and which shall have legal effect and operation in the place where the same may be made under and by virtue of, an Act of the Imperial Parliament, passed in the fifth and sixth years of the reign of his late majesty King William the Fourth, chapter sixty-two, relating to the abolition of oaths in certain cases, and of any Act in amendment thereof, shall have the same operation and effect in this Province as if authenticated under oath before the same officers before whom the declaration had been made, and as if these officers had been authorized to administer such oath.

Acts, deeds, &c., done in Great Britain and Ireland and British possessions, and authenticated legally there, to have same effect as if proved in this Province.

34. Acts, deeds, evidence, acknowledgments and declarations now or hereafter done, made, taken, or proved in Great Britain or Ireland, or any of Her Majesty's possessions, with these forms of authentication and proof which shall be the legal mode of proof and authentication in those places, shall have the same force and effect in this Province as if sworn to before the same persons and officers by and before whom the proof and authentication may be made, and as if those persons or officers had power to administer an oath.

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## CHAPTER 85.

### OF LIENS IN FAVOR OF MECHANICS AND OTHERS.

Meaning of terms.

1. In this Chapter the term "contractor" means a person contracting with or employed directly by the owner for the doing of work or placing or furnishing of machinery or materials for the purposes mentioned in the second section of this Chapter. The term "sub-contractor" means a person not contracting with or employed directly by the owner for the purposes aforesaid, but contracting with or employed either mediately or immediately by a person so contracting with or employed by the owner, and in all cases the evidence of such contract or employment must be in writing.

2. Unless there be an express agreement in writing to CHAP. 85.  
 the contrary, every contractor or sub-contractor shall, Lien to attach, if  
 agreement, etc.,  
 filed. provided he file the agreement and statement hereafter provided for, have a lien or charge for the price of any work done or materials furnished under such agreement, upon the estate and interest of the person for whom such work is done or materials furnished, in the building, erection, or mine where such work is done or materials furnished, and in the lands occupied thereby and usually enjoyed therewith, and limited in amount to such sum as shall be justly due to the person entitled to such lien.

3. Such lien shall attach upon the estate and interest Limitation of lien  
 in certain cases. legal and equitable of the person at whose request and upon whose credit in writing any such work is done, or materials or machinery placed or furnished in such building, erection, or mine, and the lands occupied thereby or enjoyed therewith, provided always that in case the lien is claimed by a sub-contractor, the amount to be claimed in respect thereof shall be limited to the amount payable to the contractor or sub-contractor as the case may be, for whom the work has been done or materials or machinery have been furnished or placed, and shall not in any case attach upon such estate and interest so as to make the same or the owner thereof liable for the payment of any greater sum than the sum payable by such owner to the contractor.

4. In case the land upon or in respect to which the Priority of mort-  
 gages over lien. work is done or materials or machinery are placed is encumbered by a mortgage or other charge, existing or created before the commencement of the work, or of the placing of the materials or machinery upon the land, such mortgage or other charge shall not have priority over the lien to any greater extent than the sum by which the selling value of the land with such work, materials, or machinery thereon exceeds the sum by which such selling value thereof has been actually increased by the improvement caused by such work, materials, or machinery being placed thereon, provided that the mortgagee or holder of such charge consent to such lien charging the land, and testifies his consent thereto by executing the contract in respect of which the lien is claimed; and in case such consent is not given no such mortgage or other charge shall be affected by any subsequently acquired lien.

5. In cases where the estate or interest charged by In case of lease-  
 hold, fee simple  
 now charged. such lien is leasehold, the fee simple may also with the consent of the owner thereof be subject to said charge, provided such consent is testified by the signature of such owner upon the statement of claim at the time of the



CHAP. 85. registering thereof and duly verified, and by his executing the contract in respect to which such lien is claimed.

Unpaid accounts  
for labor, &c.,  
provision as to.

6. All persons furnishing materials to or doing labor for the contractor under and by virtue of a written contract, and who shall have obtained the consent of the owner or person against whom the lien is claimed to such contract (such consent to be evidenced by his execution of such contract), and who shall notify the owner or such other person thereby within seven days after such material is furnished or labor performed, of an unpaid account or demand against such lien holder for such material or labor, shall be entitled to a charge therefor *pro rata* upon any amount payable by such owner or other person under said lien; and if the owner pays the amount of such charge to the person furnishing material and doing labor as aforesaid, such payment shall be deemed a satisfaction *pro tanto* of such lien.

Validity of ac-  
count, how deter-  
mined.

7. In case of any dispute as to the validity or amount of such unpaid account or demand, the same shall be first determined by proceedings in the proper court in that behalf, or by arbitration as herein provided, at the option of the person having such unpaid account or demand against the lien holder; and during the pending of such proceedings to determine the dispute so much of the amount of lien as is in question therein may be withheld from the person claiming the lien.

Failure to pay,  
of person prima-  
rily liable.

8. In case the person primarily liable to the person entitled to the lien fails to pay the amount awarded or found due within ten days after the award is made, the owner, contractor or sub-contractor may pay the same out of any moneys due by him to the person primarily liable as aforesaid on account of the work done or materials or machinery furnished or placed in respect of which the indebtedness arose, and such payment, if made after an award or finding of the court, shall in all cases, or if made without any arbitration or trial having previously been had or dispute existing then, if the indebtedness in full existed and to the extent thereof, operate as a discharge *pro tanto* of the moneys so due as aforesaid to the person primarily liable.

Payment of  
ninety per cent.,  
operation of.

9. All payments up to ninety per centum of the price to be paid for the work, machinery or materials as defined by section two of this Chapter, made in good faith by the owner to the contractor, or by the contractor to the sub-contractor, or by one sub-contractor to another sub-contractor, before notice in writing by the person claiming the lien has been given to such owner, contractor or sub-contractor, as the case may be, of the claim of such

person, shall operate as a discharge *pro tanto* of the lien CHAP. 85. created by this Chapter, but this section shall not apply to any payment made for the purpose of defeating or impairing a claim to a lien existing or arising under this Chapter.

10. The said lien shall, in addition to all other rights or remedies given by this Chapter, also operate as a charge to the extent of ten per centum of the price to be paid as aforesaid by such owner up to ten days after the completion of the work in respect of which such lien exists, or of the delivery of the materials, and no longer, unless notice in writing be given as hereinbefore provided. Additional operation of lien.

11. A statement of claim in the form or to the effect in schedule A to this Chapter shall be registered, and the contract or agreement in writing in respect of which such claim is made shall be filed in the registry office in the county or other registration division in which such land is situate, before or during the progress of the work aforesaid, or within thirty days from the completion thereof, or from the supplying or placing of the machinery aforesaid, and every registrar of deeds shall keep a book in which he shall register such statements and note the filing of such contracts or agreements. Statement, contracts, &c., to be registered.

12. Such statement of claim shall be verified by the affidavit of the person entitled thereto, and shall state:— Contents of statement, and how verified.

(a.) The name and residence of the claimant, and of the owner of the property to be charged, and of the person for whom and upon whose credit the work is done or materials or machinery furnished, and the time or period within which the same was or was to be done or furnished.

(b.) The work done or materials or machinery furnished.

(c.) The sum claimed as due or to become due.

(d.) The description of the land to be charged.

13. When such statement is so registered and contract filed, the person entitled to said lien shall be deemed a purchaser *pro tanto* and within the provisions of the law relating to the registry of deeds and encumbrances affecting lands. Claimant to be deemed a purchaser.

14. The registrar, upon payment of the fee of one dollar, shall register and file such claim and contract, so that the same may appear as an encumbrance against the land therein described, and such lien shall be discharged by the registrar on his receiving a release to that effect from the person entitled to said lien and verified as required in cases of ordinary instruments affecting lands. Registrar's fees and duties.

## CHAP. 85.

Sub-contractor's  
claim settled by  
arbitration.

15. In case a claim is made by a sub-contractor in respect of a lien to which he is entitled, and a dispute arises as to the amount due or payable in respect thereof, the same shall be settled by arbitration. One arbitrator shall be appointed by the person making the claim, one by the person by whom he shall have been employed, and the third arbitrator shall be appointed by the two so chosen. The decision of the arbitrators or a majority of them shall be final and conclusive. In case either of the parties interested in any such dispute refuses or neglects within three days after notice in writing requiring him to do so to appoint his arbitrator, or if the two arbitrators appointed fail to agree upon a third, the appointment may be made by a judge of the County Court in which the lands in respect of which the lien is claimed are situate.

Unregistered  
lien, when  
cease.

16. Every lien which has not been duly registered under the provisions of sections 11, 12, 13, and 14 of this Chapter, shall absolutely cease to exist after the expiration of thirty days after the work has been completed or materials or machinery furnished, unless in the meantime proceedings are instituted to realize the claim under the provisions of this Chapter, and a certificate thereof (which may be granted by the judge or court before whom or in which the proceedings are instituted) is duly registered in the registry office of the county or other registration division wherein the lands in respect of which the lien is claimed are situate.

Registered lien,  
when to cease.

17. Every lien which has been duly registered under the provisions of sections 11, 12, 13, and 14 of this Chapter, shall absolutely cease to exist after the expiration of ninety days after the work has been completed or materials or machinery furnished, or the expiry of the period of credit, unless in the meantime proceedings shall have been instituted to realize the claims under the provisions of this Chapter, and a certificate thereof (which may be granted by the judge or court before whom or in which the proceedings are instituted) is duly registered in the registry office of the county or other registration division wherein the lands in respect of which the lien is claimed are situate.

Proceedings for  
the recovery of  
claims.

18. When the amount of the claims in respect of any lien is under eighty dollars the proceedings to recover the same shall be taken in the County Court of the district in which the land charged is situate, and when the amount of such claims is eighty dollars and under two hundred dollars, such proceedings may be taken either in such County Court or in the Supreme Court, and when such amount is two hundred dollars and upwards, such proceedings shall be taken in the Supreme Court.

19. Such proceedings shall be commenced by petition CHAP. 85. and writ of summons, in which the person against whom the lien is claimed shall be made a defendant, and the petition shall contain a brief statement of the contract on which it is founded, and of the amount due thereon, with a description of the premises subject to the lien, and all other material facts and circumstances, and shall pray that the defendant may be ordered to pay the amount claimed or due, and in default that the premises may be sold and the proceeds of the sale be applied to the discharge of the demand, which said writ and petition shall be served in the ordinary way, and such suit shall be proceeded with in like manner as suits for the foreclosure of mortgages. Proceedings, how commenced and prosecuted.

20. Any number of lien holders or persons who have actually performed labor or furnished labor or materials on one or more buildings or structures upon different lots of land, when the labor was performed or materials furnished for the same owner, contractor or other person, may join in the same petition or proceedings for their respective liens, and the same proceedings shall be had in regard to the rights of each petitioner, and the defendant may defend as to each petitioner in the same manner as if he had severally petitioned for his individual lien. Lien holder may join in proceedings.

21. The owner of the building or structure in respect of which the lien is claimed shall in all cases be made a party to such proceedings, and before any final order is made or hearing takes place in such proceedings, notice of the same shall be given to all other lien holders on the same lands, such notice to be given in such manner, by personal service, advertisement in a newspaper, or otherwise, and for such length of time, as the court or a judge may order. Owner to be made a party.

22. The court or a judge may refer any matter in controversy to a master or examiner, who may take accounts and make all requisite enquiries and report therein, which said report may be modified, varied, set aside or confirmed by the court or a judge, and the court or a judge may order payment of the amounts found due the petitioners or any of them, and on default of payment may direct the sale of the estate and interest charged by such lien in the same way as lands are now sold by the sheriff under foreclosure, and the said sheriff shall distribute the proceeds of such sale as directed by the order under which the same is made. Matter may be referred to master. Sale in default of payment.

23. The costs in all proceedings under this Chapter shall be such as are payable in respect of the like or similar matters according to the ordinary procedure of the Costs to be in discretion of court.

CHAP. 85. said courts respectively, and shall in all cases be in the discretion of the court.

Orders may be granted at chambers. 24. All motions may be made and orders granted in proceedings under this Chapter before and by a judge at chambers.

Lien holder's right to pass to representatives. 25. In the event of the death of a lien holder, his right of lien shall pass to his personal representatives, and the right of a lien holder may be assigned by any instrument in writing.

In event of plaintiff's death, &c. 26. In the event of the death of any plaintiff in any proceeding under this Chapter, or of a plaintiff's neglect or refusal to proceed therewith, any one or more other lien holders of the same class may by leave of the court in which the proceeding is taken, and on such terms as may be deemed just and reasonable, prosecute and continue such proceedings.

Lien holders to rank *pari passu*. 27. When there are several liens under this Chapter against the same property, each class of the lien holders shall rank *pari passu* for their several amounts, and the proceeds at any sale shall be distributed among them *pro rata* according to their several classes and rights, and they shall respectively be entitled to execution for any balance due to them respectively after said distribution.

Property not to be removed pending proceedings. 28. During the continuance of any proceedings under this Chapter, no portion of the property affected thereby shall be removed to the prejudice of such lien, and any attempt at such removal may be restrained by application to the court or a judge having jurisdiction in the premises.

Registry of lien, how vacated, &c. 29. Upon application to the court or judge having jurisdiction in the premises, such judge or court may receive security or payment into court in lieu of the amount of such claim, and may thereupon vacate the registry of such lien, or may annul the said registry on any other ground.

Proceedings in case of refusals to discharge lien. 30. In any such proceedings under this Chapter, or upon application of any person interested, the court or a judge may proceed to hear and determine the matter of such lien and make such order as seems just, and in case the person claiming to be entitled to such lien has wrongfully refused to sign a certificate of discharge thereof, or without just cause claims a larger sum to be due than is found by such judge or court, the court or judge may order and adjudge him to pay to the other party such costs as the judge or a court may think fit to award.

Creditors may maintain action. 31. Nothing in this Chapter shall be construed to prevent a creditor on such contract from maintaining an action thereon at the common law in like manner as if he had no such lien for the security of his debt.

SCHEDULE.

CHAP. 86.

A.

A. B., of \_\_\_\_\_ in the County of \_\_\_\_\_ (occupation) under Chapter 85, Revised Statutes, Fifth Series, "Of Liens in favor of Mechanics and Others," claims a lien upon the estate or interest of C. D., of \_\_\_\_\_ in the County of \_\_\_\_\_ (occupation) in respect of the following work (or materials) that is to say :

which work was (or is to be) done (or materials were furnished) for the said C. D. on or before the day of \_\_\_\_\_ 18 \_\_\_\_\_

The amount claimed as due or to become due is the sum of \_\_\_\_\_ dollars.

The description of land to be charged is the following :—

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18 \_\_\_\_\_ .

Witness, E. F. \_\_\_\_\_ (Sgd.) \_\_\_\_\_ A. B.

CHAPTER 86.

OF THE PROPERTY AND CIVIL RIGHTS OF ALIENS.

1. Aliens may take, hold, and convey, and transmit real estate. May hold and convey real estate.

2. No title to real estate shall be invalid on account of the alienage of any former owner or holder thereof. Titles not invalid.

3. Nothing in this Chapter shall have the effect of confirming or rendering valid the title or claim of any alien invalid or incapable of being enforced on account of alienage, on the thirty-first day of March, one thousand eight hundred and fifty-four. Proviso.

CHAP. 88.

## CHAPTER 87.

## OF JOINT TENANCY AND TENANCY IN COMMON.

Estate to two or  
more held a  
tenancy in com-  
mon.

1. Every estate granted or devised to two or more persons in their own right shall be a tenancy in common, unless expressly declared to be in joint tenancy; but every estate vested in trustees or executors as such shall be held by them in joint tenancy. This section shall apply as well to estates already created or vested as to estates hereafter to be granted or devised.

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 CHAPTER 88.

## OF ESTATES TAIL.

Estates tail  
abolished.

1. All estates tail are abolished; and every estate which hitherto would have been adjudged a fee tail, shall hereafter be adjudged a fee simple, and may be conveyed and devised or descend as such.

## TITLE XX.

OF TITLE TO REAL AND PERSONAL PROPERTY  
BY WILL AND BY DESCENT.

## CHAPTER 89.

## OF WILLS OF REAL AND PERSONAL ESTATE.

1. Any person may devise and bequeath by his will, What property may be devised. executed as hereinafter mentioned, all real estate and all personal estate, and all rights and interests in real or personal estate to which he shall be entitled, either at law or in equity, at the time of his death, and which if not so devised or bequeathed would devolve upon his heirs-at-law or representatives.

2. No will by any person under the age of twenty-one No wills of infants valid. years shall be valid.

3. In addition to the powers conferred on married Wills of married women. women by the Chapter of the Revised Statutes, "Of the Property of Married Women," any married woman may, without her husband's consent, make a will appointing one executor or more to a will whereof she is executrix, or an appointment by will made in pursuance of a power to be executed notwithstanding coverture.

4. No will shall be valid unless it shall be in writing Wills, how executed. signed at the end or foot thereof by the testator or by some other person in his presence and by his direction; and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and such witnesses shall attest and shall subscribe the will in the presence of the testator; but no form of attestation shall be necessary.

5. Every will shall so far only as regards the position Signatures to wills. of the signature of the testator or of the person signing for him, be deemed to be valid if the signature is so placed at or after, or following, or under, or beside, or opposite to the end of the will, that it is apparent on the face of the will that the testator intended to give effect by such signature to the writing signed as his will, and no such will shall be affected by the circumstance that the signature does not follow, or is not immediately after, the foot or end of the will, or by the circumstance that a blank space intervenes between the concluding word of the will and



CHAP. 89. the signature, or by the circumstance that the signature is placed among the words of the *testimonium* clause, or of the clause of attestation, or follows, or is after, or under the clause of attestation, either with or without a blank space intervening, or follows, or is after, or under, or beside the name or one of the names of the subscribing witnesses, and the enumeration of the above circumstances shall not restrict the generality of the above enactment, but no signature shall be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature shall be made.

Execution of wills without the Province.

6. Every will made out of the Province (whatever may be the domicile of the testator at the time of making the same, or at the time of his death) shall, as regards personal estate, be held to be well executed for the purpose of being admitted to probate in Nova Scotia, if the same be made according to the forms required, either by the law of this Province, or by the law of the place where the same was made, or by the law of the place where the testator was domiciled when the same was made, or by the law then in force in the place where he had his domicile of origin.

Will not revoked by change of domicile.

7. No will shall be held to be revoked or to have become invalid, nor shall the construction thereof be altered, by reason of any subsequent change of domicile of the person making the same.

Soldiers' and sailors' wills of personal estate as heretofore.

8. Any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as heretofore.

Power of appointment by will, executed as a will.

9. No appointment made by will in exercise of any power shall be valid unless the same be executed in manner hereinbefore required; and every will executed in manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of such power shall be executed with some additional or other form of execution or solemnity.

Due execution sufficient publication.

10. Every will executed in manner hereinbefore required shall be valid without any other publication thereof.

Incompetency of witnesses.

11. No will shall be invalid on account of the incompetency of the witnesses to prove its execution.

Devise to attesting witnesses &c., void in certain cases.

12. All devises, bequests, or appointments, except charges and directions for the payment of debts, to an attesting witness of the will, or to the wife or husband of such person, shall be void; and he shall be admitted to

prove the execution of the will or the validity or invalidity thereof; provided that where there shall happen to be two competent witnesses to the will beside such person, such devise, bequest, or appointment shall not be void. CHAP. 89.

13. In case by any will any real or personal estate shall be charged with any debt, and any creditor or the wife or husband of any creditor whose debt is so charged shall attest the execution of such will, such creditor notwithstanding such charge shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof. Debts charged upon estate shall not disqualify creditor as witness.

14. No person shall on account of his being an executor of a will be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof. Executors may be witnesses.

15. All wills shall be revoked by marriage, except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not in default of such appointment pass to the heir, executor or administrator, or the person entitled as next of kin. Marriges shall revoke will, except in certain cases.

16. No will shall be revoked by any presumption of an intention to revoke on the ground of an alteration in circumstances. Revocation not presumed from change of circumstances.

17. No will or codicil or any part thereof shall be revoked otherwise than as above mentioned, or by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator or by some person in his presence and by his direction, with the intention of revoking the same. Wills, how revoked.

18. No cancelling by drawing lines across a will or any part thereof, and no obliteration, interlineation or other alteration made in any will after the execution thereof, shall be valid or have any effect except so far as the words or the effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; but the will with such alteration as part thereof shall be deemed to be duly executed if the signature of the testator, made by himself or some other person in his presence and by his direction, and the subscription of the witnesses, be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will. Obliteration, interlineations, &c, effect of.

## CHAP. 89.

Will revoked,  
how revived.

19. No will or codicil or any part thereof which shall be in any manner revoked shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same; and when any will or codicil which shall be partly revoked and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown.

Conveyances and  
other acts, how  
far they shall  
affect wills pre-  
viously made.

20. No conveyance or other act made or done subsequently to the execution of a will of any real or personal estate therein comprised, except an act by which such will shall be revoked as before mentioned, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death.

Wills, when to  
take effect; ex-  
ecutors to be  
trustees to fulfil  
testator's con-  
tracts in certain  
cases.

21. Every will shall be construed, with reference to the real and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will. If the testator at the time of his death were liable to perform any contract for the sale and conveyance of any real or personal estate, the executors of his will shall, notwithstanding any devise or bequest of the real or personal estate to which such contract refers, be deemed trustees thereof so far as may be necessary for performing such contract, and shall have power to execute the necessary conveyances for the performance thereof; and the executors shall hold the purchase money subject to such uses and purposes as may in such will be expressed respecting such real or personal estate, or such purchase money, or otherwise, for the use and benefit of the estate.

Lapsed legacies  
included in re-  
siduary devise.

22. Unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised or intended to be comprised in any devise in such will contained which shall fail or be void by reason of the death of the devisee in the life time of the testator, or by reason of the devise being contrary to law, or otherwise incapable of taking effect, shall be included in the residuary devise, if any, contained in such will.

Rules for con-  
struing wills of  
real estate in  
certain cases.

23. A devise of the land of the testator, or of the land of the testator in any place, or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a leasehold estate, if the testator had no freehold estate which could be described by it, shall be construed to

include the leasehold estate of the testator, or his leasehold estates or any of them to which such description shall extend, as the case may be, as well as freehold estates; unless a contrary intention shall appear by the will. CHAP. 89.

24. A general devise or bequest of the real or personal estate of the testator, or of the real or personal estate of the testator in any place, or in the possession of any person, mentioned in his will, or otherwise described in a general manner, shall be construed to include any real or personal estate, or any real or personal estate to which such description shall extend, as the case may be, which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will. General devise, how construed.

25. Where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will. Devise of real estate, without words of limitation, construed as devise of all testator's interest.

26. In any devise or bequest of real or personal estate, the words "die without issue," or "die without leaving issue," or "have no issue," or any other words which may import either a want or failure of issue of any person in his lifetime, or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime, or at the time of the death of such person, and not an indefinite failure of his issue; unless a contrary intention shall appear by the will by reason of such person having a prior estate, or of a preceding gift being, without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise. But this Chapter shall not extend to cases where such words import, if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age, or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue. The words "die without leaving issue," &c., how construed.

27. Where any real estate shall be devised to any trustee or executor, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate; unless a definite term of years, absolute or determinable, or an estate of freehold, shall thereby be given to him expressly or by implication. Devise of real estate to trustee or executor, how construed.

## CHAP. 89.

Devises of estates  
tail not to lapse  
if devisee have  
issue.

28. Where any person to whom any real estate shall be devised for an estate tail, or for an estate in *quasi* entail, shall die in the lifetime of the testator leaving issue, who would be inheritable under such entail if such estate existed, and any such issue shall be living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator; unless a contrary intention shall appear by the will.

Devise to testa-  
tor's children  
not to lapse if  
they have issue  
living.

29. Where any person, being a child or other issue of the testator, to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator; unless a contrary intention shall appear by the will.

Mortgaged  
estate primarily  
liable.

30. When any person dies seized of or entitled to any estate or interest in any real estate which at the time of his death is charged with the payment of any sum or sums of money by way of mortgage, and such person has not, by his will or deed or other document, signified any contrary or other intention, the heir or devisee to whom such real estate descends or is devised shall not be entitled to have the mortgage debt discharged or satisfied out of the personal estate, or any other real estate of such person; but the real estate so charged shall, as between the different persons claiming through or under the deceased person, be primarily liable to the payment of all mortgage debts with which the same is charged, every part thereof according to its value bearing a proportionate part of the mortgage debts charged on the whole thereof.

Mortgagee's  
rights not affect-  
ed.

31. Nothing in the next preceding section contained shall affect or diminish any right of the mortgagee on such real estate to obtain full payment or satisfaction of his mortgage debt, either out of the personal estate of the person so dying as aforesaid, or otherwise; and nothing herein contained shall affect the rights of any person claiming under or by virtue of any will, deed or document made before the first day of January, one thousand eight hundred and eighty-two.

Construction,  
how effected by  
preceding sec-  
tion.

32. In the construction of any will or deed, or other document to which the next preceding section of this Chapter relates, a general direction that the debts or that all the debts of the testator shall be paid out of his personal estate shall not be deemed to be declaration of an intention

contrary to or other than the rule in the said section CHAP. 90. contained, unless such contrary or other intention is further declared by words expressly or by necessary implication referring to all or some of the testator's debts or debt charged by way of mortgage on any part of his real estate.

33. Any person suppressing a will shall, on summary conviction thereof before two justices of the peace or a stipendiary magistrate, forfeit after the lapse of the first thirty days, twenty dollars for every month he shall so suppress such will. Penalty for suppressing a will.

34. The words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Chapter, except when the nature of the provision or the context shall exclude such construction, be interpreted as follows, viz. : the word "will" shall extend to a codicil and to an appointment by will or by writing in the nature of a will in exercise of a power, and also to a disposition by will and testament or devise of the custody and tuition of any child, and to any other testamentary disposition; the words "real estate" shall extend to manors, messuages, lands, rents, and hereditaments, whether of freehold or any other tenure whatsoever, and wheresoever situate, and whether corporeal, incorporeal or personal, and to any undivided share thereof, and to any estate, right or interest, other than a chattel interest therein; and the words "personal estate" shall extend to leasehold estates and other chattels real, and also to moneys, shares of government and other stocks or funds, whether in this Province or the United Kingdom or elsewhere, to securities for money not being real estate, to debts, rights of action, rights, credits, goods, and all other property whatsoever, which by law devolves upon the executor or administrator, and to any share or interest therein. Definition of terms.

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## CHAPTER 90.

### OF THE DESCENT OF REAL AND PERSONAL ESTATE.

1. Where any person shall die entitled to any real estate in fee simple or for the life of another, not having devised the same, it shall descend to his children in equal shares, and in case of the decease of any of his children, to such as shall legally represent them, such representatives to take the share of the deceased parent in equal proportions, and if there be no child of the intestate living at the time of his death, to his other lineal descendants; Rule of descent of undevise real estate, where deceased leaves issue.

**CHAP. 90.** and if all the descendants shall be in the same degree of kindred they shall share the estate equally, otherwise they shall take according to the right of representation.

Whers he leaves no issue.

2. If the deceased shall leave no issue, one half of his real estate shall go to his father, and the other half to his widow in lieu of dower; and if there be no widow the whole shall go to his father.

Other cases, and as to collateral kindred.

3. If he shall leave no issue, nor father, one half of his real estate shall go to the widow, and the other half shall be distributed in equal shares to his mother, brothers and sisters, and the children of any deceased brother or sister by right of representation; and if there be no widow, the whole shall go to his mother, brothers and sisters, and the children of any deceased brother or sister by right of representation; and where the intestate shall leave no issue, and no widow, father, mother, brother or sister, nor the children of any brother or sister, his estate shall go in equal shares to his next of kin in equal degree, excepting that where there are two or more collateral kindred in equal degree but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through an ancestor who is more remote; but in no case shall representatives be admitted among collaterals after brother's and sister's children.

Case of unmarried deceased minor, leaving brothers or sisters surviving, or their issue.

4. If any person shall die, leaving several children, or leaving one child and the issue of one or more others, and any such surviving child shall die under age, and not having been married, all the estate that came to the deceased child by inheritance from such deceased parent shall descend in equal shares to the other children of the same parent, and to the issue of any such other children who shall have died, by right of representation.

Method of dividing property under last section.

5. If at the death of such child who shall die under age, and not having been married, all the other children of his parent shall also be dead, and any of them shall have left issue, the estate that came to such child by inheritance from his parent shall descend to all the issue of the other children of the same parent; and if all the issue are in the same degree of kindred to such child, they shall have his estate equally, otherwise they shall take according to the right of representation.

Mode of computing degrees of kindred.

6. The degrees of kindred shall be computed according to the rules of the civil law; and the kindred of the half blood shall inherit equally with those of the whole blood in the same degree.

7. The interest of a party in lands held in trust for him in fee simple shall descend, and shall be chargeable with his debts in the same manner as if he had died seised of such lands.

CHAP. 90.

Interest of deceased in lands held in trust, chargeable with debts.

8. The personal estate of any person who shall die without having bequeathed the same shall be distributed as follows:

Rules for distributing personal estate.

The widow shall be allowed all her paraphernalia, articles of apparel or ornament, according to the degree and estate of her husband, the apparel of the minor children, and also such provisions and other articles as shall be necessary for the reasonable sustenance of herself and the family under her care for the period of ninety days after the death of her husband; and, in addition, such provisions and other necessaries for the use of herself and family as shall be allowed and ordered by the judge of probate, and such allowance shall be made, as well when the widow waives the provision made for her in the will of her husband as when he dies intestate.

The wearing apparel of the deceased, not exceeding forty dollars in value, shall be distributed at the discretion of the executor or administrator among the family of the deceased.

The remaining personal estate, after payment of the debts of the deceased, the charges of his funeral, and the necessary medical and other attendance upon him in his last illness, and the expenses attendant upon the settlement of the estate, shall be distributed, one third to the widow, if any, and the residue among the persons who would be entitled to the real estate, and if there be no widow, then the whole among such persons.

9. Any child born after the death of the father, there being no provision made in his will for such child, shall have the like interest in the real and personal estate of his father as if he had died intestate; and all the devisees and legatees in the will shall abate proportionably their respective devises and bequests; the share of the posthumous child to be set out and assigned by the Court of Probate so as to affect as little as possible the disposition of the property made by the testator.

Posthumous children, how provided for when testator has made no provision

10. Any real or personal estate given by the intestate as an advancement to any child or grandchild, shall be considered as a portion of the estate of the intestate, so far as regards the division and distribution of the estate of the deceased, and shall be taken by such child or grandchild towards his share of the intestate's estate.

Advancement, how treated on division and distribution.

11. If such advancement shall exceed the share of the child or grandchild, so advanced, he shall be excluded from

Same subject.



**CHAP. 90.** any further portion in the division and distribution of the estate, but he shall not be required to refund any of such advancement; and, if the amount so received shall be less than his share, he shall be entitled to as much more as will give him his full share of the estate of the deceased.

Advancement in real estate, how to be considered and regulated.

12. If the advancement be in real estate, the value thereof shall, for the purposes of the preceding section, be considered as part of the real estate to be divided; and if in either case it shall exceed the share of real or of personal estate respectively that would have come to the child or grandchild, so advanced, he shall not refund any part of it, but shall receive so much less out of the other part of the estate as will make his whole share equal to those of the other heirs who are in the same degree with him.

What gifts or grants shall be held advancements.

13. All gifts and grants shall be deemed to have been made in advancement, if expressed in the gift or grant to be so made, or if charged in writing by the intestate as an advancement, or acknowledged in writing as such by the child or grandchild, or upon the evidence of witnesses, to be examined before the judge of probate, and not otherwise.

Valuation by testator conclusive. Advancement,

14. If the value of the estate so advanced shall be expressed in the conveyance, or in the charge or valuation thereof made by the intestate, it shall be considered as of that value in the division and distribution of the estate; otherwise it shall be estimated according to its value when given.

When party dies before intestate.

15. If any child or grandchild so advanced shall die before the intestate, leaving issue, the advancement shall be taken into consideration in the division and distribution of the estate, and the amount thereof shall be allowed accordingly by the representatives of the child or grandchild so advanced as so much received towards their share of the estate, in like manner as if the advancement had been made directly to them.

Tenancy by curtesy and in dower not affected hereby.

16. Nothing in this Chapter contained shall affect the title of a husband as tenant by the curtesy, nor that of a widow as tenant in dower.

Lands held in dower, how divided.

17. Lands held as dower by the widow shall after her decease be divided as hereinbefore directed. Lands set off as dower prior to the Act of fifth Victoria, chapter twenty-two, shall, after the decease of the widow, be divided as before the passing of that Act.

Undivided estate distributed as intestate.

18. All such estate, real or personal, as is not devised in a will, shall be distributed as if the testator had died intestate.

## TITLE XXI.

OF FRAUDS, PERJURIES, AND SECRET BILLS  
OF SALE.

## CHAPTER 91.

## OF THE PREVENTION OF FRAUDS AND PERJURIES.

1. All leases, estates, or other interests in lands or in mining areas or other mining rights or privileges not put in writing and signed by the parties creating or making the same, or their agents thereunto lawfully authorized by writing, shall have the force of leases or estates at will only, except leases not exceeding the term of three years from the making thereof, whereupon the rent reserved shall amount at least to two thirds of the annual value of the lands demised.

Leases and estates in land, &c., not in writing to be estates at will, except as to leases under three years.

2. No interest in land or in mining areas or other mining rights or privileges shall be assigned, granted, or surrendered except by act and operation of law, unless it be by deed or note in writing signed by the party assigning, granting or surrendering the same, or by his agent thereunto authorized by writing.

Interest in lands, &c., assignable only by deed or note in writing.

3. No declaration or creation of any trust in lands or in mining areas or other mining rights or privileges shall be valid unless it shall be in writing, signed by the party entitled to create or declare the trust, or by his last will, but this provision shall not extend to any trusts in lands or mining areas or other mining rights or privileges arising or resulting by implication or construction of law, or which may be transferred or extinguished by act or operation of law.

Declaration or creation of trust in land, &c., must be in writing.

Proviso.

4. No grant or assignment of any trust shall be valid unless it shall be in writing, signed by the party granting or assigning the same, or by his last will.

Assignment of trusts to be in writing.

5. No action shall be brought whereby to charge any executor or administrator upon any special promise to answer damages out of his own estate, or whereby to charge any defendant upon any special promise to answer for the debt, default, or miscarriage of another person, or whereby to charge any person upon any agreement made upon consideration of marriage, or upon any contract or sale of

Contracts which require to be in writing.

CHAP. 91. lands or any interest therein, or in any mining areas or other mining rights or privileges, or upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which the action shall be brought, or some memorandum or note thereof, shall be in writing, signed by the party to be charged therewith, or some other person authorized by him.

Promise to be answerable for debt of another not invalid for want of statement of consideration.

6. No special promise made by any person to answer for the debt, default or miscarriage of another person, being in writing and signed by the party to be charged therewith, or some other person by him thereunto lawfully authorized, shall be deemed invalid to support an action, suit, or other proceeding to charge the person by whom such promise shall have been made, by reason only that the consideration for such promise does not appear in writing, or by necessary inference from a written document.

Ratification of contract of infant must be in writing to maintain action.

7. No action shall be maintained whereby to charge any person upon any promise, made after full age, to pay any debt contracted during infancy, or upon any ratification after full age of any promise or simple contract made during infancy, unless such promise or ratification shall be made by some writing signed by the party to be charged therewith, or by his agent duly authorized to make such promise or ratification.

Representation as to character, &c., to obtain credit, must be in writing.

8. No action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade, or dealings of any other person to the intent or purpose that such other person may obtain credit, money, or goods thereupon, unless such representation or assurance be made in writing, signed by the party to be charged therewith.

Contract for sale of goods.

9. No contract for the sale of any goods for the price of forty dollars or upwards shall be good, unless the buyer accept part of the goods so sold and actually receive the same, or give something in earnest to bind the bargain or in part payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto authorized.

Contract for sale of goods to be delivered in future.

10. The provisions of the next preceding section shall extend to all contracts for the sale of goods of the value of forty dollars and upwards, notwithstanding the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured, or provided, or fit, or ready for delivery, or although some act may be requisite for the making or completing thereof, or rendering the same fit for delivery.

## CHAPTER 92.

OF THE PREVENTION OF FRAUDS ON CREDITORS BY SECRET  
BILLS OF SALE.

1. Every bill of sale of personal chattels made either absolutely or conditionally, or subject or not subject to any trust, and whereby the assignee shall have power either with or without notice on the execution thereof, or at any subsequent time, to take possession of any property and effects comprised in or made subject to such bill of sale, and every schedule annexed thereto or therein referred to, or a true copy of such bill of sale and schedule, shall be filed with the registrar of deeds of the county or district where the maker resides; and in case a copy be filed the same shall be accompanied by an affidavit of the execution of the original bill of sale; otherwise such bill of sale, as against the assignee of the grantor under the laws relating to insolvency, or for the general benefit of his creditors, or against *bond fide* purchasers, or as against the execution creditors, or sheriffs and constables, and other persons levying on or seizing the property comprised therein, under process of law, shall only take effect and have priority from the time of the filing thereof.

Bills of sale or sworn copies to be filed with registrar of deeds where maker resides.

Only to take effect from time of filing.

2. In case such bill of sale is subject to any defeasance the same shall be considered as part thereof, and such defeasance or a copy thereof shall be filed with the bill of sale or copy; otherwise such bill of sale shall be null and void as against the same persons and as regards the same property and effects, as if such bill of sale or copy thereof had not been filed according to the provisions of this Chapter.

Defeasance to be filed.

3. Every hiring, lease, or agreement for the sale of goods and chattels, accompanied by an immediate delivery, and followed by an actual and continued change of possession, whereby it is agreed that the property in the goods and chattels, or in case of an agreement for sale, a lien thereon for the price or value thereof, or any portion thereof, shall remain on the hirer, lessor, or bargainor, until the payment in full of such price or value by future payments or otherwise, shall be in writing, signed by the parties thereto, or their duly authorized agents, in writing, a copy of which authority shall be attached to such agreement, and shall set forth fully, by recital or otherwise, the terms, nature and effect of such hiring, lease, or bargain for sale, and the amount to be paid thereunder, whether expressed as rent, payment, or otherwise; and shall be

Provisions as to hiring, leases, agreements, &c.

CHAP. 92. accompanied by an affidavit of a witness thereto of the due execution thereof, and by the several affidavits of the parties thereto; or in case such agreement has been signed by an agent or agents of the parties, duly authorized as aforesaid, then by the affidavit of such agent or agents respectively, stating that the writing truly sets forth the agreement between the parties thereto, and truly sets forth the claims, lien, or balance due to the hirer, lessor, or bargainer therein, and that such writing is executed in good faith, and for the express purpose of securing to the hirer, lessor, or bargainer, the payment of the claim, lien, or charge thereon, at the times and under the terms set out in the writing, and for no other purpose; and such agreement and affidavit shall be registered at the time and place, and in every respect according to the provisions of this Chapter; otherwise the claim, lien, charge, or property intended to be secured to the hirer, lessor, or bargainer, shall be null, void, and of no effect as against the creditors and subsequent purchasers and mortgagees of the person to whom such goods and chattels are hired, leased, or agreed to be sold.

Affidavit to ac-  
company bill of  
sale.

4. Every bill of sale or chattel mortgage of personal property, other than mortgages to secure future advances or mortgages for securing the mortgagee against the endorsement of any bills or promissory notes or other liability incurred for the mortgagor, shall hereafter be accompanied by an affidavit of the party giving the same, or his agent or attorney duly authorized in that behalf, that the amount set forth therein as being the consideration thereof is justly and honestly due and owing by the grantor to the grantee, and that the bill of sale or chattel mortgage was executed in good faith and not for the purpose of protecting the property mentioned therein against the creditors of the grantor or mortgagor, or of preventing the creditors of such grantor or mortgagor from obtaining payment of any claims against him; otherwise such bill of sale or chattel mortgage shall be null and void as against the creditors of the grantor or mortgagor.

Provisions for  
securing future  
advances.

5. In case of a mortgage of goods and chattels for securing the mortgagee repayment of any future advances, or in case of a mortgage of goods and chattels for securing the mortgagee against the endorsement of any bills or promissory notes, or any other liability by him incurred for the mortgagor, and in case it is executed in good faith, and sets forth fully by recital or otherwise the terms, nature and effect of the agreement for such advances or endorsements or other liability to be incurred, and the amount of the liability intended to be created, and in case

such mortgage is accompanied by the affidavit of the mortgagor, as in the schedule hereto annexed, or in case the mortgage has been given or entered into by an agent or attorney duly authorized in writing to give or enter into such mortgage, and if the agent or attorney is aware of the circumstances connected therewith, then, if accompanied by the affidavit of such agent or attorney, such affidavit, whether of the mortgagor or his agent or attorney, stating that the mortgage truly sets forth the agreement entered into between the parties thereto, and truly states the extent of the liability intended to be created and covered by said mortgage, and that such mortgage was executed in good faith and for the express purpose of securing the mortgagee repayment of his advances, or against the payment of the amount of his liability for the mortgagor, as the case may be, and not for the purpose of securing the goods and chattels mentioned therein against the creditors of the mortgagor, nor to prevent such creditors from recovering any claims which they may have against such mortgagor, and in case such mortgage, with such affidavit, is filed with the registrar of deeds of the county wherein the maker resides, the same shall be valid and binding to the same extent and as against the same persons as the bills of sale or chattel mortgages mentioned in this Chapter; otherwise it shall be null and void as against the creditors of the mortgagor.

CHAP. 92.

6. The affidavits mentioned in the three next preceding sections shall be made before a judge of any court, any commissioner for taking affidavits, or any justice of the peace or notary public, and if the same is made by the agent or attorney of the party required to make the same, it shall be set out in said affidavit that the said agent or attorney making the same is personally cognizant of the facts therein set out.

Affidavits, before whom made.

Contents.

7. The registrar of deeds shall cause the bills of sale or copies thereof deposited with him, to be numbered and indexed, and an alphabetical list thereof to be made in a book to be kept by him for that purpose, containing the names and descriptions of the grantors and grantees, the date of execution and filing, and the sums for which the same have been given; and every bill of sale or copy may be inspected by any person paying a fee of twenty cents therefor.

Bills of sale when filed to be numbered and indexed.

Fee for inspection.

8. When a bill of sale shall have been discharged, an entry of such discharge may be made in the registry list upon the production of a certificate from the holder of such bill of sale, duly attested to by the oath of a subscribing witness, made before the registrar of deeds or any justice

Discharge, how entered.

CHAP. 92. of the peace, or otherwise, as required for the registry of deeds of real estate, and such certificate shall be indexed and entered on the list, and on the files kept by the registrar.

Registrar's fees. 9. The registrar shall be entitled to twenty cents for his trouble in filing, indexing and entering every bill of sale or copy, and to twenty cents for administering every oath, under this Chapter, and to twenty cents for entering and indexing every certificate of discharge of a bill of sale.

Meaning of terms. 10. In construing this Chapter the following words and expressions shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction, that is to say :

" Bills of sale." The expression " bills of sale " shall include bills of sale, assignments, transfers, declarations of trust without transfer, and other assurances of personal chattels, and also powers of attorney, authorities or licenses to take possession of personal chattels as security for any debt, but shall not include the following documents, that is to say, assignments for the general benefit of the creditors of the person making or giving the same, marriage settlements, transfers or assignments of any ship or vessel, or any share thereof, transfers of goods in the ordinary course of business of any trade or calling, bills of sale of goods in foreign parts or at sea, bills of lading, warehouse keepers' certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessors of such documents to transfer or receive goods thereby represented, or assignments of personal property to creditors under proceedings for the relief of insolvent debtors.

Personal chattels." The expression " personal chattels " shall mean goods, furniture, fixtures and other articles capable of complete transfer by delivery, and shall not include chattel interests in real estate, nor shares or interests in the stock, funds, or securities of any government, or in the capital or property of any incorporated or joint stock company, nor choses in action.

" Apparent possession." Personal chattels shall be deemed to be in the " apparent possession " of the person making or giving the bill of sale so long as they shall remain or be in or upon any building, land, or other premises occupied by him, or as they shall be used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person.

11. The affidavits mentioned in sections four and five CHAP. 92. of this Chapter shall be as nearly as may be in the forms in schedules A. and B. respectively.

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SCHEDULES.

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A.

Canada,  
Province of Nova Scotia, }  
County of ———.

I, A. B., of ———, in the county of ——— (*occupation*)  
make oath and say as follows :

I am the grantor (*or agent or attorney of the grantor* duly authorized in that behalf, and have a personal knowledge of the matters hereinafter deposed to) mentioned in the accompanying bill of sale (*or, chattel mortgage*).

The amount set forth therein as being the consideration thereof is justly and honestly due and owing by the grantor to the grantee, and the bill of sale (*or, chattel mortgage, as the case may be,*) was executed in good faith, and not for the purpose of protecting the property mentioned therein against the creditors of the grantor (*or, mortgagor,*) or of preventing the creditors of such grantor (*or, mortgagor,*) from obtaining payment of any claims against him.

Sworn to at ———, in the  
county of ———, this — day } (Sgd.) A. B.  
of ———, A. D. 18—,  
Before me,

---

B.

Canada,  
Province of Nova Scotia, }  
County of ———.

I, A. B. of ———, in the County of ———, (*occupation*)  
make oath and say :

I am the mortgagor (*or, agent or, attorney of the mortgagor* duly authorized in that behalf, and have a personal knowledge of the matters hereinafter deposed to) mentioned in the accompanying chattel mortgage.



CHAP. 92. The mortgage hereto annexed truly sets forth the agreement entered into between the parties, and truly states the extent of the liability intended to be created and covered by said mortgagor, and that such mortgage was executed in good faith and for the express purpose of securing the mortgagee repayment of his advances (*or, and, against the payment of the amount of the liability of the mortgagee for the mortgagor, as the case may be,*) and not for the purpose of securing the goods and chattels mentioned therein against the creditors of the mortgagor, nor to prevent such creditors from recovering any claims they may have against such mortgagor.

*vs.* Sworn to at \_\_\_\_\_, in the )  
 county of \_\_\_\_\_, this — day }  
 of \_\_\_\_\_, A. D. 18—. (Sgd.) A. B.  
 Before me,

## TITLE XXII.

## OF THE DOMESTIC RELATIONS.

## CHAPTER 93.

## OF THE SOLEMNIZATION OF MARRIAGE.

1. All marriages heretofore solemnized in this Province in good faith before any minister of any religious denomination, in the presence of one or more witnesses, and where the parties so married have cohabited together as man and wife, shall be deemed and are hereby made valid; notwithstanding any real or supposed want of legal authority in the ministers to solemnize such marriages, and notwithstanding any want of license or of publication of banns under which such marriages were had, or any other legal objection thereto. Provided, that nothing herein contained shall have the effect of confirming or rendering valid any marriage between parties who were not legally authorized to enter into the marriage contract by reason of consanguinity, affinity, or otherwise.

Certain marriages declared valid.

Proviso.

2. The issue of all marriages hereby confirmed or rendered valid, are declared to be and are made legitimate to all intents and purposes.

Issue declared legitimate.

3. The rights of parties claiming under the issue of any such marriage, shall be the same to all intents and purposes as if the marriage hereby confirmed had been valid and legal at the time of the solemnization thereof.

Claims under issue declared valid.

4. The three preceding sections shall not extend to or affect any suit or other legal proceeding now pending.

Not to affect pending suits.

5. The Governor-in-Council may from time to time prescribe and change forms to be used in the carrying into operation of, and for facilitating and rendering uniform the duties to be performed under, this Chapter, which forms shall be used under the provisions, penalties and obligations of this Chapter, in the same manner as if set out in a schedule hereto and specially referred to, unless from the context the meaning is evidently different. The term "deputy registrar" shall mean issuer of marriage licenses and deputy registrar of marriages; and "occupier" shall include master, governor, keeper, steward, resident medical officer or superintendent of gaol, prison, poors' asylum, hospital, lunatic asylum, or other public or private charitable institution.

Governor-in-Council to prescribe forms.

Definition of terms.

## CHAP. 93.

Persons who may solemnize marriage.

6. Every person recognized as a duly ordained clergyman or minister by any congregation or body of Christians within this Province, may solemnize marriage by license, or after publication of banns, in conformity with the provisions of this Chapter.

Marriage by banns.

7. No persons shall officiate in the solemnization of any marriage, unless notice of such marriage shall have previously been given publicly during the time of divine service at three several meetings, at a place of public worship, on two or more Sundays, provided there shall be more than one public service in the said place of worship on each Sunday, otherwise at two several meetings on two Sundays, in the place where at least one of the parties resides, or unless a license shall have been obtained as herein prescribed for the solemnization of such marriage.

By license.

Banns, by whom published.

8. The officiating clergyman or minister of a congregation at the place where either of the parties desiring to be married resides, shall give the notices in the preceding section mentioned, after having been requested to do so, unless in cases where compliance would be illegal or inconsistent with the rules and discipline of the church or congregation to which the clergyman, minister or parties respectively belong.

Penalty for illegally officiating at solemnization of marriage.

9. Whosoever not being thereto duly authorized shall presume to solemnize or celebrate marriage, or shall officiate or assist in solemnizing or celebrating any marriage, shall for every such offence forfeit to the use of Her Majesty a sum not exceeding four hundred dollars, nor less than one hundred dollars, and suffer twelve months' imprisonment, notwithstanding such marriage shall be invalid by law.

## OF LICENSES FOR THE SOLEMNIZATION OF MARRIAGE.

Governor to sign licenses; how distributed.

10. The Governor may from time to time sign and seal marriage licenses in blank (and any marriage license so signed and sealed in blank by any Lieutenant-Governor before going out of office shall be as valid as if said Lieutenant-Governor had remained in office down to the date of issuing the same, and may be issued as hereinafter provided in the same manner as if such Lieutenant-Governor had not gone out of office), which shall be distributed by the Provincial Secretary, who shall place them in such number as may from time to time be required, together with an equal number of blank bonds, in the hands of persons to be appointed by the Governor-in-Council throughout the Province to be issuers of marriage licenses and deputy registrars of marriages, and who shall be so located as that no part of any county shall be at an inconvenient distance from one of them. Due publicity

Information published.

under the direction of the Governor-in-Council shall be given to these appointments and the objects of this Chapter. CHAP. 93.

11. The issuers or deputy registrars shall deposit with the Provincial Secretary receipts for all the blank marriage licenses they shall respectively receive, for which they shall be answerable to him at the rate of two dollars and fifty cents for each license. Deputy registrars to give receipts for licenses.

12. When a marriage license is required for use, application shall be made to an issuer or deputy registrar who, on receiving for the license two dollars and fifty cents, and on execution, by the man contemplating marriage and sufficient sureties, of one of the bonds properly filled up, shall insert in one of the blank marriage licenses in his possession the name of the clergyman or minister to whom it is to be directed, and the names, abodes and additions, of the man and woman to be married, and having subscribed it with his own name and the exact date of issuing, shall deliver the license so perfected to the party applying; and a marriage license shall not be issued or delivered except thus perfect and adapted for some particular marriage clearly expressed in it, and it shall not, on any pretence, be used for any other marriage. The bond, among other things, shall be conditioned for return of the license. Mode in which deputy registrar shall fill up license when applied for.

13. Every deputy registrar or issuer shall record the issue of every license, with the date and the names of the clergyman, the parties and sureties, and shall record the return of every license, with the date when received by him, and the particulars of the marriage, and the name of the officiating clergyman as certified in the return. Bond.

14. Every clergyman authorized by law to perform the marriage ceremony shall apply for and shall on application obtain from the nearest issuer or deputy registrar, forms, in which he shall register with the required particulars all the marriages celebrated by him, whether by banns, license or otherwise. But this shall not be construed to interfere with the keeping of any other marriage register he may be otherwise required or may see proper to keep. Deputy registrar shall record issue of license and proceedings thereon.

15. It shall be the duty of every deputy registrar to ascertain, as far as may be in his power, the several marriages occurring in his vicinity, and to cause the same to be registered under the provisions of this Chapter. When persons whose signatures are required are unable to write, their cross or mark, made in the presence of and attested by the deputy registrar or a witness, shall be equivalent to signature. It shall be in the power of the Governor-in-Council, should it be found expedient for carrying out this Chapter, from time to time to cause the limits to be Clergymen shall register particulars of all marriages in forms furnished by deputy registrar.

CHAP. 93. defined of all, or of some only, of the deputy registrars' jurisdiction under this Chapter, and as occasion may require to alter the same, of which due publicity shall be given. If any error shall be discovered to have been committed in the entry of any marriage in any register, the person discovering the same shall forthwith give information thereof to the deputy registrar, and such deputy registrar is hereby authorized and required to investigate the circumstances of the case; and if he shall be satisfied that an error has been committed in any such entry, it shall be lawful for him to correct the erroneous entry according to the truth of the case, by entry in the margin, without any alteration of the original entry. Envelopes enclosing the papers or returns required to be transmitted and made under this Chapter, shall be marked "registration returns," with the signature of the officer or clergyman transmitting subscribed.

Errors in registry, how corrected.

Envelope enclosing returns, &c., how marked

#### RETURNS.

##### 1. *By Clergyman.*

Clergyman shall return to deputy registrar, marriage license, within ten days after marriage.

16. Every clergyman shall return to the issuer or deputy registrar, by whom the same is subscribed, every marriage license used by him for the celebration of marriage within ten days after such celebration, with the blank certificate endorsed thereon fully filled in and subscribed by himself, stating the fact of the celebration, the names, abodes, and additions of the couple married, the time and place of such marriage, and the names of at least two persons present thereat besides himself.

Deputy Provincial Secretary may sign license.

17. All marriage licenses or other documents required under the provisions of this Chapter to be signed by the Provincial Secretary, shall be as valid to all intents and purposes if signed by the Deputy Provincial Secretary as if signed by the Provincial Secretary, provided that the words "Deputy Provincial Secretary" are added after such signature.

Shall keep register of all marriages and return same to issuer.

18. Every clergyman or minister shall keep a register of all marriages solemnized by him, whether by banns or license, by filling up a blank form with all the particulars required concerning each marriage, and shall return it along with the license, or by itself if said marriage has been solemnized by banns, to the nearest issuer of marriage licenses, or the issuer from whom the license was received, within ten days after such celebration, and shall be entitled to receive twenty-five cents for each return of marriage so made, provided it has been made conformably to law.

Fee.

Issuers shall make quarterly returns to Provincial Secretary's office.

19. Issuers of marriage licenses shall make returns to the Provincial Secretary's office, in the first weeks of January, April, July, and October in every year, of all

marriages of which returns have been made to them by CHAP. 93.  
 clergymen, which returns shall contain all the particulars  
 given in the forms filled up and forwarded to them by said  
 clergymen; and they shall receive fifty cents for each  
 marriage so returned, to be paid out of the marriage  
 license fund.

2. *By Deputy Registrar.*

20. Every deputy registrar shall, in the second weeks Deputy regi-  
trars shall make  
the following  
returns.  
 in January, April, July, and October in each year, return  
 under his signature, to the Provincial Secretary's office, as  
 follows:—

(1.) All the licenses issued by him and returned to him, Licenses issued  
and returned.  
 with all certificates of marriage returned to him.

(2) All bonds taken by him on the issue of marriage Bonds.  
 licenses.

(3.) All the registers of marriage returned to him by Registers re-  
turned by clergy-  
men.  
 clergymen.

(4.) His own records of marriage licenses issued by, His own records  
of marriages.  
 and certificates of marriage returned to him.

(5) And, generally, all the entries and returns required All returns re-  
quired under this  
Chapter.  
 under this Chapter to be made by the deputy registrar in  
 relation to marriages, together with an exact list of the  
 documents returned, signed by him.

21. Every deputy registrar shall also, within the first Deputy registrar  
shall account to  
Provincial Secre-  
tary for all li-  
censes.  
 weeks of January, April, July, and October in each year,  
 return to the Provincial Secretary's office an account, veri-  
 fied under oath, of all marriage licenses issued by him,  
 and of the number of marriage licenses remaining in his  
 hands, and shall pay, and with such account transmit to  
 the Provincial Secretary's office, the full amount of fees on  
 all licenses issued by him, at two dollars and fifty cents for  
 each license, deducting the sums paid by him to clergymen,  
 under the eighteenth section, and of which he shall render  
 an account under his signature.

PENALTIES.

22. Every person who shall officiate in the solemniza- Penalty for sol-  
emnizing mar-  
riage otherwise  
than herein  
provided.  
 tion of marriage, unless under license issued in conformity  
 with the provisions of this Chapter, or under banns or  
 notices given in conformity with the provisions of this  
 Chapter, shall forfeit two hundred dollars.

23. Every officiating clergyman or minister of a Penalty for re-  
fusal to give no-  
tices as in sec-  
tions 7 and 8.  
 congregation, who shall, in violation of the seventh and  
 eighth sections, refuse or neglect to give the notices directed  
 by those sections, shall, except as therein excepted, forfeit  
 two hundred dollars, and shall be liable to an action for  
 damages at the suit of either of the parties aggrieved.

## CHAP. 93.

Penalty for falsifying marriage license.

24. Any clergyman or minister who shall use, and all persons who shall be instrumental in the using of, a marriage license that shall not have been perfected and filled up and subscribed by a deputy registrar in manner as herein directed, and any person who shall alter or assist, or be concerned in altering any marriage license that has been so perfected, or shall celebrate or assist, or be concerned in celebrating any marriage under pretence of a marriage license issued for another and different marriage, shall, for every and each of the said offences, be liable to a penalty not exceeding two hundred dollars.

Penalty for not returning license.

25. Every clergyman who shall not, within ten days after the celebration of a marriage by him under license, return the license with a certificate of the performance of the ceremony as required by this Chapter, and every clergyman entitled to solemnize marriage who shall not within the time and in the manner required by the eighteenth section, make the return of marriages therein directed, to the issuer of marriage licenses from whom he received the blank forms, or if he shall not continue to be issuer of marriage licenses, then to his successor, or otherwise to the nearest issuer of marriage licenses, or in case of absence from home or illness, then within ten days after return or recovery, shall for each neglect forfeit, for the use of the issuer of marriage licenses to whom the return should be made, four dollars, and for every day after such ten days until return shall be made as required by this Chapter, twelve and one half cents.

Penalty for neglect of duty by deputy registrar.

26. Every deputy registrar who neglects or refuses, or without probable cause omits, to make any entry or fulfil any duty which by this Chapter he ought to make or do, or who shall carelessly lose or injure any license, or bond, register, entry, document, or paper which was in his possession, under this Chapter, or who shall not within the periods herein prescribed make all the several returns and payments which by this Chapter he ought to make, or who shall part with or allow to go out of his possession, any marriage license, except in conformity with the provisions of this Chapter, or who shall in any other particular do anything contrary to the provisions of this Chapter, or omit to do anything therein required, shall forfeit, to be paid to the Provincial Secretary for the use of the marriage license fund, a fine of four dollars, and the further sum of twelve and one half cents for every day for which any such return or payment shall be delayed after the time within which the same should be made.

Penalty for making false statements.

27. Every person who shall knowingly or wilfully make, or shall cause to be made, for the purpose of being

inserted in any register of marriages, any false statements touching any of the particulars herein required to be known and registered, shall forfeit two hundred dollars. CHAP. 94.

28. Every person who shall wilfully send to any newspaper publisher, or other person, for publication in any newspaper in this Province, a fictitious or false statement of the marriage of any person, shall forfeit and pay a sum not exceeding one hundred dollars. Penalty for giving false information.

#### RECOVERY AND DISTRIBUTION OF PENALTIES AND FINES.

29. All fines and fees made payable to or for the use of a deputy registrar, may be sued for in the name of the party entitled, as a private debt, and it shall be sufficient to state in the writ that the money is claimed for the defendant's neglect of duty, or for services performed by the plaintiff under this Chapter, as the case may be. Fines and fees payable to deputy registrars, how recovered.

30. All fines, penalties, and forfeitures, which are not made payable to, or to the use of, the deputy registrars, may be prosecuted by the Provincial Secretary, or by any party who feels aggrieved, in the county or district wherein the offence occurred. The money when recovered, after deducting expenses, shall be applied one half to the use of the marriage license fund, and the other half to the use of the municipality, to be paid to the municipal treasurer. Fines, not made payable to deputy registrars, how recovered.

31. The action shall be conducted as for private debts, and it shall suffice if the writs briefly state the offence committed. Actions, how conducted.

32. Every issuer of marriage licenses shall, before entering upon the duties of his office, give a bond to Her Majesty with sureties in the sum of two hundred dollars for the faithful performance of his duties. Issuers of marriage licenses to give bonds.

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## CHAPTER 94.

### OF THE PROPERTY OF MARRIED WOMEN.

#### PRELIMINARY.

1. This Chapter may be cited as the "Married Women's Property Act, 1884." Short title.

2. In this Chapter, unless the context precludes such construction, the term "Married Woman" shall mean a woman lawfully married to a man who has not died since the marriage, nor been divorced *a vinculo*. Definition of terms.

"Judge" shall include any judge of the Supreme Court and County Court judge.



CHAP. 94. "Guardian" shall include every person, body, or authority having by law or in equity the custody or control of the property of a person who is under age, insane, or under any other legal disability whatsoever.

"Business" shall include employment, occupation, trade and profession; and,

"Deed" shall include deed, power of attorney, mortgage, lease and any other conveyance under seal, whether of real or personal property.

THE PROPERTY OF MARRIED WOMEN IN GENERAL: ITS ACQUISITION AND ENJOYMENT.

Real and personal property of women married before 19th April 1884.

3. Every married woman who shall have married before the nineteenth day of April, A. D. 1884, without any marriage contract or settlement, shall and may, from and after the said date, notwithstanding her coverture, have, hold and enjoy all her real estate, not on or before such date taken possession of by her husband, by himself or his tenants, and all her personal property, not on or before such date reduced into the possession of her husband; whether such real estate or personal property shall have belonged to her before marriage, or shall have been in any way acquired by her after marriage, otherwise than from her husband, free from his debts and obligations contracted after such date, and from his control or disposition without her consent, in as full and ample a manner as if she were sole and unmarried.

Real estate of women marrying after 19th April, 1884, to be their separate property.

4. The real estate of any woman marrying after the nineteenth day of April, A. D. 1884, whether owned by her at the time of her marriage or acquired in any manner during her coverture, otherwise than from her husband, and the rents, issues and profits thereof, respectively, shall, without prejudice to, and subject to, the trusts of any settlement affecting the same, be held and enjoyed by her for her separate use, free from any estate of her husband during her lifetime, and from his debts and obligations; and her receipts alone shall be discharges for any rents, issues and profits of the same; but nothing herein shall prejudice the right of the husband as tenant by the curtesy in any real estate of the wife which she has not disposed of during her lifetime or by will.

Proviso.

Personal property of women marrying after 19th April, 1884, to be their separate property.

5. Every woman marrying after the nineteenth day of April, A. D. 1884, without any marriage contract or settlement, shall and may, notwithstanding her coverture, have, hold and enjoy all her personal property, whether belonging to her before marriage, or acquired by inheritance, bequest, or gift, or as next of kin to an intestate, or in any other way, after marriage, free from the debts and obliga-

tions of her husband, and free from his control or disposition CHAP. 94.  
 without her consent, in as full and ample a manner as if  
 she continued sole and unmarried: Provided that this  
 section shall not extend to any property received by a Proviso.  
 married woman from her husband during coverture, beyond  
 necessary wearing apparel and other articles necessary for  
 her personal use.

6. The rents, or other proceeds or profits, arising from Rents or pro-  
 a married woman's real estate, shall, in all cases, be her ceeds of married  
 separate property, free from her husband's control, debts or woman's real es-  
 obligations; and her receipts or acquittances for the same tate to be her  
 shall be valid and sufficient for all purposes: Proviso.  
 however, anything in this Chapter to the contrary notwith- She may ap-  
 standing, that a married woman may, by power of attorney point attorney to  
 duly executed and acknowledged, as prescribed in section receive them, &c.  
 twenty-two, authorize her husband or any other person to  
 ask, demand, sue for, recover and manage such rents,  
 proceeds or profits, and to give acquittances and receipts  
 therefor.

7. Any estate or interest to which a husband may by Husband's inter-  
 virtue of his marriage be entitled in the real property of est in wife's land  
 his wife, whether acquired before or after the nineteenth not subject to  
 day of April, A. D., 1884, shall not during her life be his debts during  
 subject to the debts of the husband; but this provision her life.  
 shall not affect the right which any person, by or under Proviso.  
 any judgment or execution against the husband, shall have  
 obtained in respect of any such estate or interest acquired  
 by a husband before the said date.

8. Every married woman having separate property, Married woman's  
 whether real or personal, not settled by any ante-nuptial unsettled prop-  
 agreement, shall be liable upon any separate contract erty liable upon  
 made or debt incurred by her before marriage, such ante-nuptial con-  
 marriage being after the nineteenth day of April, A. D. tracts.  
 1884, to the extent and value of such separate property, in  
 the same manner as if she were sole and unmarried.

9. A husband shall not, by reason of any marriage Limitation of  
 solemnized after the nineteenth day of April, A. D., 1884, be husband's liabil-  
 liable for the debts of his wife contracted before marriage, ity for wife's  
 or by reason of any tort committed by her before marriage, ante-nuptial con-  
 beyond the value of the real and personal property which tracts or torts.  
 he shall have received in connection with, or as a result of  
 the marriage, or which he with reasonable diligence might  
 have so received.

When a husband after marriage pays any debt of his  
 wife, or has a judgment *bonâ fide* recovered against him in  
 any action founded on her pre-nuptial contract or tort,  
 then the husband shall not in any subsequent action be

CHAP. 94. liable for more than the excess of the value of such property over the amount of such payment or judgment.

Action by or against married woman for antenuptial cause of action.

10. In any action or proceeding at law or in equity by or against a married woman, upon any contract made or debt incurred by her before marriage, her husband shall be made a party, if residing within the Province; but, if his residence be out of the Province, the action or proceeding may go on for or against her alone; and in the declaration, bill or statement of the cause of action, it shall be alleged that such cause of action accrued before marriage, and also that such married woman has separate estate; and the judgment or decree therein, if against such married woman and her husband, or such married woman alone, shall be to recover of her separate estate only; unless in any action or proceeding against her in which her husband has been joined as a party, any false plea or answer has been pleaded or put in by him, when the judgment or decree shall be, in addition, to recover against him the costs occasioned by such false plea or answer, as in ordinary cases.

Married woman may insure her life or, with his consent, her husband's.

11. A married woman, in her own name or that of a trustee for her, may insure for her sole benefit or for the use or benefit of her children or of herself and her children, her own life, or, with his consent, the life of her husband, for any definite period, or for the term of her or his natural life; and the amount payable under such insurance shall be receivable for the sole and separate use of such married woman or her children, or herself and her children, as the case may be, free from the claims of the representatives of her husband, or of any of his creditors.

Effect of such insurance.

Man insuring his life for wife and children, &c. Results of such insurance.

12. A policy of insurance effected by any married man on his own life and expressed upon the face of it to be for the benefit of his wife, or of his wife and children, or any of them, shall enure and be deemed a trust for the benefit of his wife for her separate use, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband or to his creditors, or form part of his estate.

Proviso.

When the sum secured by the policy becomes payable, or at any time previously, a trustee thereof may be appointed by a judge, and the receipt of such trustee shall be a good discharge to the insurance office. If it shall be proved that the policy was effected and premiums paid by the husband with intent to defraud his creditors, they shall be entitled to receive out of the sum secured an amount equal to the premiums so paid.

13. A married woman may make deposits of money in her own name in any savings or other bank whatsoever, and withdraw the same by her own cheque or order, and any receipt or acquittance of such depositor shall be a sufficient legal discharge to any such bank. CHAP. 94.  
Married woman may deposit money in the bank and withdraw same.

14. If any such deposit or investment is made by a married woman by means of moneys of her husband without his consent, the court or a judge may, upon an application under the eighty-seventh section of this Chapter, order the same, and the dividends, interest and profits thereon, or any part thereof, to be transferred and paid to the husband, or his assignee or legal representative. If deposit of husband's money made without his consent.

15. Nothing hereinbefore contained in reference to moneys deposited or investments by any married woman, shall, as against the creditors of the husband, give validity to any deposit or investment of moneys of the husband made in fraud of such creditors; and any money so deposited or invested may be followed as if this Chapter had not been passed. Money deposited in fraud of husband's creditors.

16. The husband and wife shall be joined, whether as plaintiffs or defendants, in any suit arising out of, or in connection with the wife's property or her tortious act or omission, except as in this Chapter otherwise provided: Provided that any judgment recovered by the husband and wife in any such action shall enure to the separate benefit of the wife, and that any judgment recovered against them for her tort shall bind her separate estate in the first instance, and shall bind her husband's estate only so far as hers is insufficient to respond the same, and in other cases shall bind her separate estate alone and any assets which the husband shall have received, or with reasonable diligence might have received, through or as a result of the marriage. The rule as to executions shall be similar, *mutatis mutandis*, to that laid down in this section as to judgments. Husband and wife joined in action as to her property or torts.  
Provide as to effect of judgment.  
Execution.

17. Notwithstanding anything to the contrary contained in the next preceding section, a creditor having a claim arising out of or in connection with the wife's separate contract or property, shall, when the parties shall have intermarried before the nineteenth day of April, A. D., 1884,—when the wife's separate estate and the assets received by the husband through his marriage, are insufficient to respond the same—be entitled to recover against the husband the unpaid portion of such claim, in any case where such creditor would have been legally entitled to recover previous to the nineteenth day of April, A. D. 1884; except where such recovery is contrary to some provision of this Chapter not contained in the next preceding section. Creditor of wife may recover against husband in certain cases.  
Exception.

## CHAP. 94.

Execution for married woman's tort.

A wife may pledge husband's credit.

Married woman must maintain her children.

Proviso.

Chapter not to prevent making of marriage settlements.

Proviso as to property not included in settlement.

Liability of husband under marriage settlement.

18. Nothing herein contained shall be construed to protect the property of a married woman from seizure and sale on any execution against her husband, or herself and her husband, for her tort; and in such case execution shall first be levied on her separate property; and nothing herein shall be construed to prevent a wife from pledging her husband's credit for any matter for which she may now do so, without any express authority in that behalf.

19. A married woman having separate property shall be subject to all such liability for the maintenance of her children as a widow is now by law subject to for the maintenance of her children: provided always that nothing in this Chapter shall relieve her husband from any liability at present imposed upon him by law to maintain her children.

20. Nothing in this Chapter contained shall be construed to prevent any ante-nuptial settlement or contract being made in the same manner and with the same effect as such settlement or contract might be made before the nineteenth day of April, A.D., 1884; but, notwithstanding any such settlement or contract, any separate real or personal property of a married woman, acquired either before or after marriage, and not coming under or being affected by such settlement or contract, shall be subject to the provisions of this Chapter, in the same manner as if no such settlement or contract had been made; and as to such property and her personal earnings and any acquisitions therefrom, such woman shall be considered as having married without any marriage contract or settlement.

21. Every husband who hereafter takes any interest in the separate property, real or personal, of his wife, under any contract or settlement on marriage, shall be liable upon the contracts made or debts incurred by her before marriage, to the extent or value of such interest only, and no more.

## CONVEYANCE AND TRANSMISSION OF PROPERTY OF MARRIED WOMEN,

*Deeds of Married Women.*

Married woman may convey real estate or interest therein, with husband's concurrence.

22. Every married woman may by deed convey her real estate, and extinguish any power or interest vested in her respecting or in any real estate, whether in her separate right, or in right of dower, or otherwise howsoever, and may also by deed appoint an attorney for the purposes aforesaid and every of them, as fully and effectually as she could do if she were unmarried; but except as in this Chapter otherwise provided no such deed shall be valid and effectual, unless the husband joins therein or

concur therein by a separate conveyance executed by him ; CHAP. 94.  
 and no such deed appointing an attorney shall be valid or effectual unless the husband joins or concurs as aforesaid therein, or in the deed executed in pursuance thereof :  
 Provided always that any deed or power of attorney made by a married woman under this section shall be acknowledged by her before a judge, or a justice of the peace, or a notary public being a barrister of this Province, as her free act and deed, and to have been executed without compulsion by her husband, or to that effect ; which acknowledgment shall thereupon be certified by such judge, justice, or notary public, in writing upon such deed or power of attorney. Such certificate shall be in the form of schedule A to this Chapter, or to the like effect. Proviso as to acknowledgment.  
Form of certificate.

23. If such married woman reside without the Province or be absent therefrom, such acknowledgment may be taken before the mayor of any city, the judge of any court of record, or a justice of the peace, before any public minister, ambassador, consul or vice-consul of the Court of the United Kingdom of Great Britain and Ireland, or before a commissioner outside the Province, appointed by the Governor-in-Council under the provisions of the chapter of the Revised Statutes, fifth series, "Of Witnesses and Evidence," and shall be certified in writing on the deed or power of attorney by such public functionary ; and in the case of the acknowledgment being taken before the mayor of a city or a justice of the peace, his certificate shall be authenticated under the hand and seal of a notary public. Acknowledgment of married woman taken abroad.

24. Every such acknowledgment and certificate shall be registered with the deed or power of attorney, and shall be valid and effectual to bar the right or right of dower of the married woman in the lands and premises mentioned in such deed or power of attorney. Acknowledgment to be registered. Its effect.

25. Where a married woman shall not have executed a deed of lands simultaneously with her husband, she may at any future time execute a deed of release of her interest therein to any person in whom the fee simple may be : Provided that the execution of such release be acknowledged in the manner above prescribed. Married woman may release her interest subsequent to husband's conveyance of land. Proviso.

Where a husband shall not have executed a deed of property simultaneously with his wife, he may at any future time execute a deed, by way of release of his interest therein, to the grantee under his wife's deed, or to the person deriving title from such grantee. Husband may release his interest after wife's deed.

26. The real estate of a married woman who does not live under a protection order, which is not the result of her separate trading or employment under this Chapter, may be conveyed, mortgaged, or leased in the manner Conveyance of land of married woman in certain cases.

**CHAP. 94.** described in section 22: Provided that the purchase money, or the money borrowed, or rent, as the case may be, shall be the separate property of the married woman, free from her husband's control, without her consent, and from his debts or obligations; and provided, also, that she shall have power to lease any of her real estate, in any case where an instrument under seal is not required by law, without the concurrence of her husband, as freely as if she were unmarried.

Wife may join husband's guardian in conveyance of her land. 27. When the guardian of a married man is authorized to sell the interest of such married man in any real estate of his wife, the wife may join with the guardian in the conveyance, and thereby sell and convey all her estate and interest in the granted premises, in like manner as she might have done by a conveyance thereof made jointly with her husband, if he had been under no legal disability.

Partition of real estate of woman where she or husband is under guardianship. 28. The wife of a man who is under guardianship may join with the guardian, and the guardian of a woman may join with her husband, in making partition of her real estate held in joint tenancy or in common; and they may make any release or other conveyance necessary or proper for that purpose, in like manner as the parties might do if neither of them was under legal disability.

Disposal by married woman of her personal property. 29. A married woman may dispose of her personal property, either absolutely or conditionally, without her husband's concurrence, or with such concurrence, in the like cases respectively as provided with respect to her real estate; except as is in this Chapter otherwise provided.

Concurrence of husband in deed of wife's property dispensed with in certain cases. 30. Any married woman residing in the Province, not living under a protection order, whose husband is confined in a penitentiary or other prison for a criminal offence, or whose husband has ceased to live with her without sufficient legal cause, or resides without the Province, or whose husband is a minor, or insane, or idiotic, or otherwise legally incapacitated from executing a deed, or whose husband's interest in her real estate has been sold under execution or otherwise disposed of, may apply to a judge for an order dispensing with the concurrence of such husband in any deed whatsoever of or relating to her real or personal estate. The judge if he deem it expedient shall cause the husband, or the guardian of the husband if the husband have a guardian, to be notified of the order, in such a manner as the judge may decide, before making the same absolute. If such order shall be made absolute, either in the first instance or after notice as aforesaid, such married woman shall have power to execute such power of attorney, deed or other

conveyance as if she were unmarried. A certified copy of CHAP. 94. such order shall be registered with such deed or other Form of order. conveyance. Such order shall be in the form of schedule B, or to the like effect.

31. Every conveyance made before the nineteenth day of April, A. D. 1884, executed by a married woman, of or affecting her real estate, to which her husband was a party, is and shall be taken and adjudged to be valid and effectual to pass the estate which such conveyance professed to pass of such married woman in such real estate, notwithstanding the absence or want of a certificate of her consent to convey the same, and notwithstanding any irregularity, informality or defect in the certificate (if any), and notwithstanding that such conveyance may not have been executed, acknowledged or certified, as required by any Act at or before such date in force respecting the conveyance of real estate by married women. Past conveyances of married women validated in certain cases.

32. Nothing in this Chapter contained shall render valid any conveyance, to the prejudice of any title acquired from the married woman, by deed duly executed and certified as by law required, subsequently to such conveyance and before the nineteenth day of April, A. D. 1884, unless the actual possession or enjoyment of the real estate, conveyed or intended to be conveyed by the prior conveyance, has been had at any time subsequent thereto by the grantee therein, or those claiming by, from or under him, and he or they have been in such actual possession or enjoyment continuously for the period of three years before the nineteenth day of April, A. D. 1884, and he or they were at such date in the actual possession or enjoyment thereof; and nothing in this Chapter contained shall render valid any conveyance from a married woman which was not executed in good faith, or any conveyance of land of which the married woman, or those claiming under her, is or are in the actual possession or enjoyment contrary to the terms of such conveyance. Certain titles not to be prejudiced.

### *Wills of Married Women.*

33. Subject to the provisions and conditions herein-after contained, a married woman may dispose of her property, whether acquired before or after marriage, or before or after the nineteenth day of April, A. D., 1884, by will, in the same manner and with the same effect as if she were sole and unmarried. Married woman may will property.

(1.) If any such will of her property be made without the consent of the husband of such married woman, given in writing before her death, the husband after her death Proviso as to will made without husband's consent.



CHAP. 94. shall have the right to elect between the provision made for him in the will and his tenancy by the curtesy in his wife's real estate; and his election to waive the provision made by the will shall be made known by a declaration in writing, signed by him and filed in the Court of Probate in which the will shall have been proved, within three months after he shall have been notified in writing of his wife's death, and of the existence of the will, and the character of the provision thereby made for him; otherwise he shall be deemed to have accepted such provision. If the husband be within the Province no notice of the wife's death need be given him. If he be without the Province, and his residence unknown, notice may be given him by advertisement duly published in the *Royal Gazette* for a period of four weeks.

Provision as to execution of certain wills. (2.) No will, under which a husband takes a greater interest in his wife's property, real and personal, than he would be entitled to in case of her dying intestate, shall be valid or effectual unless such will shall be executed when her husband is not present, and unless at the time of the execution thereof the married woman shall declare in the presence of the witnesses that she executes such will of her free will and without any fear, threat, compulsion, or other undue influence, of, from or by her husband. No such will shall be admitted to probate or shall be deemed valid unless a recital that such declaration was made is included in the affidavit or other evidence of the execution of such will; Provided, however, that such recital may be dispensed with in any case where the testatrix makes the declaration in question before a judge, magistrate, notary public, or commissioner for taking affidavits, who appends to such will a certificate in the form of the schedule C hereto, or to the like effect, for the taking of which a fee of twenty-five cents, in addition to a fee for any necessary travel, may be charged.

Proviso.

Form of certificate.

Husband's consent irrevocable. 34. When a married woman makes a will under the next preceding section with her husband's consent, such consent shall not be revoked, except in the lifetime of such married woman, and with her consent in writing, executed in like manner as a will; but such wife may at any time revoke or cancel such will without the consent of her husband, by some writing declaring an intention to revoke the same, and executed as required in the case of a will, or by the burning, tearing or otherwise destroying the same, by herself or by some person in her presence and by her direction, with the intention of revoking the same.

Wife's will revocable.

*Intestacy.*CHAP. 94.

35. If a married woman shall die intestate, leaving issue her surviving, her husband, in addition to his estate as tenant by the curtesy, shall take one third of her personal property; and the residue of her personal estate shall be distributed amongst her issue in the like manner as if she left no husband her surviving; and if she shall die intestate without issue her surviving, one half of the real and personal estate owned by her in her own right or held for her separate use shall go to her husband, and the other half to her father, or if she have no father, then to her mother, brothers and sisters in equal shares, and the issue of any deceased brother or sister by right of representation; and if there be no issue, father, mother, brother or sister, or issue of brother or sister, the whole shall go to her husband.

Disposition of property of married women dying intestate.

*Proviso.*

36. The powers of conveying given by this Chapter to a married woman shall not impair or affect any powers which independently of this Chapter may be vested in, or limited or reserved to, her by contract or settlement, so as to prevent her from exercising such powers in any case, except so far as by any conveyance under this Chapter she may be prevented from so doing in consequence of such powers having been suspended or extinguished by such conveyance.

Powers of conveying given by Chapter not to affect certain other powers.

## PROTECTION ORDERS.

37. Any married woman having a decree for alimony, or any decree, judgment or order in the nature of a decree or order for alimony, against her husband; or any married woman who lives apart from her husband, having been obliged to leave him for cruelty or other cause which by law justifies her leaving him and renders him liable for her support; or any married woman whose husband is a lunatic, with or without lucid intervals; or any married woman whose husband is undergoing sentence of imprisonment in a penitentiary, gaol or other prison for a criminal offence; or any married woman, whose husband, from habitual drunkenness, profligacy or other cause, neglects or refuses to provide for her support and that of his family; or any married woman whose husband has never been in this Province during her coverture; or any married woman who is deserted or abandoned by her husband, or whose husband resides without the Province; may apply to a judge for an order of protection entitling her, notwithstanding her coverture, to have and enjoy all her earnings, or all her

Married women may apply for protection order in certain cases.

CHAP. 94. earnings and those of her minor children, and any acquisitions therefrom, free from the debts or obligations of her husband and from his control or disposition, and without his consent, in as full and ample a manner as if she continued sole and unmarried.

Granting and nature of order.

38. Such judge, if satisfied that the application is well founded, may grant the order, making it applicable to the earnings of the wife and her minor children, or to those of the wife alone, and making it to take effect from the date of the beginning of the cause for which it is granted, or from any later date, as to such judge shall under the circumstances of the case seem just and right.

Application for discharge of order.

39. The married woman may at any time apply, or the husband or any of the husband's creditors may at any time, on notice to the married woman, apply to a judge for the discharge of the order of protection; and such judge on sufficient cause shewn may grant such discharge.

Hearings public or private.

40. The hearing of an application for an order of protection, or for an order discharging the same, may be public or private, at the discretion of the judge.

Order to have no effect until recorded.

41. Neither the order for protection nor the order discharging the same shall have any effect until the same is registered in the office of the registrar of deeds for the county or district; and the registrar shall, immediately upon receiving any such order, endorse thereon the time of registering the same; and a certificate of the registering and date, signed by the registrar, shall be *prima facie* evidence of such registering and date; and a copy of the order which is registered, certified under the hand of the registrar to be a true copy thereof, shall be sufficient *prima facie* evidence of the order without proof of the signature of the registrar, and without further proof of the order itself or of the making or validity thereof.

Evidence of registration and contents of order.

Discharge of protection order not retrospective.

42. The order for discharging an order for protection shall not in any case be retroactive, but shall take effect from the time it is made and registered; and the order for protection, having been duly registered, shall protect the earnings of the married woman and her children, or of the married woman alone, as the case may be, until an order discharging the same be made and registered; and the married woman shall continue to hold and enjoy to her separate use any property whatsoever which, during the interval between the date fixed for the coming into force of the order of protection and the registration of the order discharging the same, she may have acquired by the earnings of herself and her minor children, or of herself alone, as the case may be.

Property acquired under order to be wife's separate estate.

43. If the husband or any creditor of, or person claim-  
ing under the husband, shall seize or continue to hold any  
property of the wife after notice of any protection order,  
he shall be liable at the suit of the wife (which she is  
hereby empowered to bring) to restore the specific property,  
and also to pay a sum equal to double the value of the  
property so seized or held after such notice.

CHAP. 94.

Penalty for seiz-  
ing or holding  
property pro-  
tected by order.

44. The provisions herein contained respecting the  
property of a wife who has obtained an order for protec-  
tion, shall be deemed to extend to property to which such  
wife has become or shall become entitled as executrix,  
administratrix or trustee subsequent to the time from which  
the order operates; and the death of the testator or  
intestate shall be deemed to be the time when such wife  
became entitled as executrix or administratrix.

Order to protect  
wife's property,  
as executrix, &c.

45. In every case where a wife shall have obtained a  
protection order, the same shall until discharged be deemed  
valid and effectual so far as necessary for the protection of  
any person dealing with the wife.

Order to protect  
person dealing  
with wife.

46. Property of or to which the wife is possessed or  
entitled for an estate in remainder or reversion, at the date  
of the order, shall be deemed to be included in the protec-  
tion given by the order; unless the judge shall in his  
discretion otherwise decide.

Remainders and  
reversions pro-  
tected by order.

Proviso.

47. Every protection order shall state the time at  
which the cause in consequence whereof the order is made  
commenced; and the order shall, as regards all persons  
dealing with such wife in reliance thereon, be conclusive as  
to the time when such cause commenced.

Order to state  
date of com-  
mencement of its  
cause.

48. Any person who shall, in reliance on any such order  
as aforesaid, make any payment to, or permit any transfer  
or act to be made or done by the wife who has obtained  
the same, shall, notwithstanding that such order may then  
have been discharged or the separation ceased or been  
discontinued, be protected and indemnified in the same way  
in all respects as if at the time of such payment, transfer  
or other act, such order were still subsisting, and the  
separation of the wife from her husband had not ceased or  
been discontinued; unless at the time of such payment,  
transfer or other act, such person had actual notice of the  
discharge of such order: Provided, however, that such  
actual notice shall not be necessary in the case of any  
person who shall have had no dealing with such married  
woman before the registration of the order discharging  
such protection order.

Person dealing  
with wife after  
order ceases to  
operate, protect-  
ed, unless he has  
had actual notice  
of cesser.

Proviso.

49. A married woman living under a protection order,  
as to all her property and doings, shall be considered as an  
unmarried woman for the purposes of contract and wrongs

Wife living un-  
der order regard-  
ed as single  
woman as to  
dealings.

**CHAP. 94.** and injuries, and suing and being sued in any civil proceeding; and her husband shall not be liable in respect of any engagement or contract she may have entered into, or for any wrongful act or omission by her, or for any costs she may incur as plaintiff or defendant: Provided that nothing shall prevent the wife from joining at any time during the existence of such protection order in the exercise of any joint power given to herself and her husband.

Proviso.

Woman under order may convey as if unmarried.

50. A married woman living under a protection order shall have the same power of conveying, mortgaging, leasing or otherwise disposing of all her real estate and personal property, whether acquired or held under such order or not, as if she were unmarried.

Will of woman living under order.

51. A married woman living under a protection order shall have the same power of disposing of her property, whether covered by such order or not, by will as if she were unmarried.

#### A MARRIED WOMAN'S SEPARATE BUSINESS.

Married woman's separate earnings, with husband's consent, free from his debts or control without protection order.

52. The wages and earnings of any married woman, acquired or gained by her after the nineteenth day of April, A. D. 1884, in any employment, occupation or trade in which she is engaged, or which she carries on separately from her husband, and also any money or property so acquired by her through the exercise of any literary, artistic or scientific skill, and all acquisitions from or investments of such wages, earnings, money or property, shall be free from the debts, disposition or control of her husband, and shall be held and enjoyed by such married woman and disposed of without her husband's consent, as fully as if she were sole and unmarried; and no order for protection shall hereafter be necessary in respect of any of such earnings, acquisitions or investments; and the possession, whether actual or constructive, by the husband of any personal property of any married woman acquired under this section, shall not render the same liable for his debts or obligations. Provided, however, that this section shall not apply in any case where the husband does not signify his consent in writing to its so applying, which consent or license shall be filed in the registry of deeds for the county or district where the wife resides and does business, the signing thereof having been first proved by one witness.

Certificate to be recorded with clerk of municipality.

53. When a married woman does or proposes to do business on her separate account, in addition to filing her husband's consent or license in the registry of deeds as provided in the next preceding section, she shall record in the office of the clerk of the city or town in which she does or proposes to do such business, or of the clerk of the

municipality or district, if such business is not to be carried on in a city or incorporated town, a certificate setting forth her name and that of her husband, the nature of the business, and the place where it is or is proposed to be carried on, giving if practicable the street and the number on the street; and when the nature of the business or the place where it is carried on is changed a new certificate shall be recorded accordingly. CHAP. 94.

If a married woman fails to file and record certificates as aforesaid, her husband may file and record them; but if such certificates are not filed and so recorded by either husband or wife the property employed in such business shall be liable to be attached as the property of the husband and to be taken on execution against him, and the husband, shall be liable upon all contracts lawfully made in the prosecution of such business, in the same manner and to the same extent as if such contracts had been made by himself. Consequences of failure to file and record same.

54. When a separate business done by a married woman is discontinued, a revocation of the consent or license hereinbefore provided for by the husband shall be filed in the registry of deeds, and a certificate of the discontinuance from the husband and wife, or from either of them, shall be recorded with the clerk of the municipality. Certificates filed and recorded when separate business is discontinued.

55. The clerk of every city, town or other municipality shall upon payment of his fees—not to exceed one dollar—record in a book kept for the purpose, any certificate required by either of the two next preceding sections, noting in such book and on the certificate itself the time when such certificate is received; and a certificate shall be considered as recorded at the time when it is left at the clerk's office. Every such clerk shall keep an index of all certificates so recorded by him, which index, and the books to which it refers, may be consulted by any person upon payment of a fee of ten cents. Municipal clerk to record certificate. Fees. Index of certificate. Fee.

56. A husband shall not be liable for any debts of his wife in respect of any employment or business in which she is engaged in her own behalf (or in respect of any of her own contracts) from the date of the filing and registration of the consent and certificate mentioned in the fifty-second and fifty-third sections of this Chapter until the filing and registration of a revocation of the same. Husband not liable for debts arising out of wife's separate business.

57. A married woman may maintain an action in her own name for the recovery of any wages, earnings, money and property to which she may be or become entitled under the fifty-second section of this Chapter, and shall have in her own name the same remedies against all persons whomsoever for the protection and security of such wages, earnings, money and property as if the same belonged to her as Wife trading separately may sue and be sued as if unmarried.

**CHAP. 94.** an unmarried woman; and any married woman may be sued and proceeded against separately from her husband in respect of any of her separate debts, engagements or contracts arising out of or connected with such wages, earnings, money and property, as if she were unmarried.

Wife trading separately deemed an unmarried woman, for certain purposes.

58. A married woman carrying on a separate trade or occupation under a consent or license as aforesaid, duly recorded, as to her property and doings arising out of or concerning such separate trade or occupation, shall be considered as an unmarried woman for the purposes of contract and wrongs and injuries, and suing and being sued in any civil proceeding; and her husband shall not be liable in respect of any engagement or contract she may have entered into, or for any wrongful act or omission by her, or for any costs she may incur as plaintiff or defendant: Provided that nothing shall prevent the wife from joining, at any time during the existence of such consent or license, in the exercise of any joint power given to herself and her husband.

Proviso.

Wife trading separately may dispose of certain property.

59. A married woman carrying on a separate business with her husband's consent under this Chapter, shall have the same powers of conveying, mortgaging, leasing, or otherwise disposing of, any real or personal estate which she may have acquired as a result of such separate trading or occupation, as if she were unmarried.

Wife trading separately may will certain property.

60. A married woman carrying on a separate business with her husband's consent or license, under this Chapter, shall have the same power of disposing of the property acquired in such business by will as if she were unmarried, and as to any other property shall have the same rights as if there were no such consent or license: Provided that any will so made, under which a husband takes a larger proportion of his wife's property than if she died intestate, shall have no effect unless she makes in connection therewith the declaration or acknowledgment mentioned in the thirty-third section.

Proviso.

#### THE RIGHTS OF A MARRIED WOMAN IN THE PROPERTY OF HER HUSBAND.

##### *The Wife's Rights in case of her Husband's Intestacy.*

Real estate of intestate husband.

61. Where a man shall die entitled to any real estate in fee simple or for the life of another, not having devised the same, and shall leave a widow and issue, the widow shall be entitled, by way of dower, to a third part of such real estate during the term of her natural life, or until the earlier termination of the life upon which it is limited; and where any such man shall so die and shall leave a widow and no issue, one half of his real estate shall go to his

widow in lieu of dower; and, if such intestate shall have no kindred, the whole of his real estate shall go to his widow for her own use. CHAP. 94.

62. Where any man shall die entitled to personal property, not having bequeathed the same, and shall leave a widow, she shall be allowed all her paraphernalia, articles of apparel or ornament, according to the degree and estate of her husband, the apparel of the minor children (if any), and also such provisions and other articles as shall be necessary for the reasonable sustenance of herself and the children under her care for the period of ninety days after the death of the husband, and in addition such provisions and other necessaries for the use of herself and children as shall be ordered by the judge of probate; and such allowance shall be made as well when the widow waives the provision made for her in the will of her husband as when he dies intestate. The widow shall also be allowed one third of the residue of the personal estate which shall remain after payment of the debts of the deceased, the charges of his funeral and the expenses attendant upon the settlement of the estate; and if there be no lawful issue of the intestate, one half of such residue; and, if the intestate shall have no kindred, the whole of such residue shall go to the widow for her own use.

Widow's right in personal property of intestate.

### *Dower.*

63. If a testator by his will manifest an intention to dispose of his property in a manner inconsistent with his wife's right to dower, the widow shall be obliged to elect between the provision made for her by the will and her dower.

When testator means to bar dower, widow must elect.

64. Where a husband dies beneficially entitled to any land for an interest which would not entitle his widow to dower out of the same at common law, and such interest, whether wholly equitable or partly legal and partly equitable, is an estate of inheritance in possession, or equal to an estate of inheritance in possession (other than an estate in joint tenancy), then his widow shall be entitled (in equity) to dower out of such land.

Widow to have dower in equitable estate.

65. Where a husband has been entitled to a right of entry or action in any land, and his widow would be entitled to dower out of the same if he had recovered possession thereof, she shall be entitled to dower out of the same although her husband did not recover possession thereof; but such dower shall be sued for or obtained within the period during which such right of entry or action might be enforced.

Widow entitled to dower where husband had right of entry or action.

Proviso.



## CHAP. 94.

No dower out of unimproved land

Provisoos.

66. Dower shall not be recoverable out of any separate and distinct lot, tract or parcel of land, which at the time of the alienation by the husband, or at the time of his death if he died seised thereof, was in a state of nature and unimproved by clearing, fencing or otherwise for the purpose of cultivation or occupation; but this shall not restrict or diminish the right to have woodland assigned to the dowress under the chapter of the Revised Statutes, fifth series, "Of the Writ of Dower," from which it shall be lawful for her to take firewood necessary for her own use, and timber for fencing the other portions of land assigned to her of the same lot, tract or parcel: Provided also, that reasonable allowance shall be made for the value of unimproved land whereof the widow shall not be endowed, in setting off her dower in the improved lands of her husband under such chapter.

*How Dower may be barred.*

Dower, how barred.

Wife may join in deed with husband's guardian.

Where wife joins guardian, her interest in proceeds of sale protected.

Husband of wife non compos may get order dispensing with her execution of conveyance.

Procedure, &c.

67. Dower may be barred as provided in sections twenty-two, twenty-three, twenty-four and twenty-five.

68. When the guardian of a married man is duly authorized to sell or mortgage real estate of such married man, the wife of such man may join with the guardian in the conveyance, and thereby release her right of dower in the granted premises, in like manner as she might have done by joining in a deed or mortgage thereof made by her husband if he had been under no legal disability.

69. In case of such release by the wife of her right of dower, the proceeds of the sale may be so invested and disposed of as to secure to her the same right, use and benefit of and in the principal sum and the income thereof as she would have had in such real estate if it had not been sold. An agreement made between her and the guardian for securing and disposing of the proceeds, or of any part thereof, for the purpose aforesaid, if approved by a judge, or any order therefor made by a judge if she and the guardian cannot agree, shall be valid and binding on all persons interested in the estate, and may be enforced in the proper court or by an action at law, as the case may require.

70. Where an owner of land whose wife is a lunatic or of unsound mind, is desirous of selling or mortgaging the land free from dower, and such wife has no guardian other than her husband, or the guardian refuses to join in the deed or mortgage, such owner may apply in that behalf to a judge, and if such judge approves, he may by an order to be made by him in a summary way, upon such evidence as to the judge seems meet, and either *ex parte* or upon

such notice as he may deem requisite, dispense with the concurrence of the wife for the purpose of barring her dower; and the judge shall also ascertain and state in the order, the value of such dower, and order such amount to remain a charge upon the property, or to be secured otherwise for the wife's benefit, or to be paid and applied for her benefit, or shall make such other order as he deems best; and thereupon a deed or mortgage by the husband, expressed to be free from his wife's dower shall, subject to the terms and conditions mentioned in the order, be sufficient to bar her right thereto, as if she were of sound mind and had duly executed a deed or mortgage jointly with her husband for that purpose. CHAP. 94.

71. The next preceding section shall apply to any case in which an agreement for sale or mortgage was made, and a conveyance executed by the husband before the nineteenth day of April, A. D. 1884, and part of the purchase money or loan retained by the purchaser or mortgagee on account of dower, and to any case in which an indemnity was given against the dower of the wife, also to any case where any person owns or has the right to sell or mortgage (whether as trustee or otherwise) land which is subject to the dower of a lunatic, whether such dower is inchoate or complete, and whether the person applying is or is not the husband of the lunatic. Preceding section to be retrospective in certain cases.

72. Where a wife of an owner of land has been living apart from him for two years, under such circumstances as by law disentitle her to alimony or any similar allowance for her maintenance, and such owner is desirous of selling or mortgaging the land free from dower, he may apply to a judge, and if the judge approves he may by order to be made by him in a summary way, upon such evidence as to the judge seems meet, and either *ex parte* or upon notice (to be served personally, unless the judge otherwise directs) dispense with the concurrence of the wife for the purpose of barring her dower; and he shall (unless the wife has been so living apart from her husband under such circumstances as disentitle her to dower) ascertain and state in the order the value of such dower, and order such amount to remain a charge upon the property, or to be secured otherwise for the wife's benefit, or to be paid and applied for her benefit, as he deems best; and thereupon a deed or mortgage by the husband expressed to be free from his wife's dower, shall, subject to any terms mentioned in the order, be sufficient to bar her right thereto, as if she had duly executed a deed or mortgage jointly with her husband for that purpose. Where wife improperly lives apart from her husband, judge may dispense with her concurrence in deed. Dower protected except in certain cases.

CHAP. 94.

Preceding section retrospective in certain cases.

73. The next preceding section shall apply to any case in which an agreement for sale or mortgage was made, a conveyance executed by the husband before the nineteenth day of April, A. D. 1884, and a part of the purchase money or loan retained by the purchaser or mortgagee on account of dower, or an indemnity given against such dower, and also to any case where any person owns or has the right to sell or mortgage (whether as trustee or otherwise) land which is subject to dower, whether such dower is inchoate or complete, and whether the person applying is or is not the husband of the dowress.

Bar of dower not to be extended.

74. No bar of dower contained in any mortgage or other instrument intended to have the effect of a mortgage or other security upon real estate, shall operate to bar such dower to any greater extent than shall be necessary to give full effect to the rights of the mortgagee or grantee under such instrument.

Wife to have dower in surplus proceeds of sale.

75. In the event of a sale of the land comprised in any such mortgage or other instrument under any power of sale contained therein, or under any legal or equitable process, the wife of the mortgagor or grantor who shall have so barred her dower in such lands shall be entitled to dower in any surplus of the purchase money arising from such sale which must remain after satisfaction of the claim of the mortgagee or grantee, to the same extent as she would have been entitled to dower in the land from which such surplus purchase money shall be derived had the same not been sold.

Certain irregularities not to prejudice bar of dower in certain cases.

76. Where a husband before the nineteenth day of April, A. D. 1884, duly conveyed land of which he was the owner, any deed executed before the said date by his wife for the purpose of barring her dower, to which deed her husband is not a party, is and shall be taken and adjudged to be valid and effectual to have barred her dower in the lands in which such deed professed to bar dower; notwithstanding the absence or want of a certificate touching her consent to be barred of her dower, and notwithstanding any irregularity, informality or defect in the certificate (if any), and notwithstanding that such deed may not have been executed, acknowledged or certified, as required by the law heretofore in force respecting the barring of dower.

Chapter not to affect chapter, "Of the Writ of Dower."

77. Nothing in this Chapter contained shall be construed to affect the provisions of the chapter of the Revised Statutes, fifth series, "Of the Writ of Dower," further than is herein expressly mentioned.

## MISCELLANEOUS.

## CHAP. 94.

78. Nothing in this Chapter shall in any way affect the rights of a married woman in and to any property now or hereafter conveyed to a trustee or trustees for her benefit.

Chapter not to affect certain trusts.

79. If at the time of her marriage a woman is acting as executrix, administratrix, guardian, or trustee, she shall have power to continue to act in such capacity, notwithstanding her coverture and irrespective of her husband's consent; but if she has not obtained probate of the will, or taken out letters of administration, or been appointed guardian or trustee, she shall not have power to act as executrix or administratrix, guardian or trustee without her husband's consent, which shall be in writing and shall be filed in the proper court. Such consent shall not be revoked, except with the concurrence of the judge or judge of probate for cause shewn.

Woman acting as executrix, &c., when married, may continue to act; otherwise to have husband's consent.

80. Nothing herein contained shall enable any married woman under the age of twenty-one years to do any act or enter into any contract which she could not do or enter into if unmarried. Provided, however, that it shall be competent and lawful for any married female infant to relinquish her right of dower in any property of her husband, whether by joining in his deed or by executing a separate conveyance, and in either case making the usual declaration that such deed was made voluntarily.

Nothing to enable minor married woman to do more than if unmarried. Proviso.

81. Nothing herein contained shall authorize any married woman to make a contract with her husband otherwise than in this Chapter expressly mentioned; but a married woman shall be a competent witness as to injuries to her property by her husband.

Married woman not to contract with her husband, but may testify in certain cases.

82. When a married woman comes into this Province from another province, colony or country, without her husband, he never having lived with her in this Province, she shall have all the powers and be subject to all the liabilities of an unmarried woman.

Married woman coming from abroad without husband regarded as unmarried.

83. When a husband and his wife, married in another province, colony or country, come into this Province, either at the same time or at different times, and reside here as husband and wife, she shall retain all property which she had acquired under the laws of any other province, colony or country, or by a marriage contract or settlement made out of this Province. Their so residing together here shall have the same effect with regard to their subsequent rights and liabilities as if they had married at the time of their first residing together in this Province.

Persons married abroad coming to live in Province.

## CHAP. 94.

Husband's curtesy protected.

Gift to husband not to invalidate will.

Exception.

Guardian.

Questions as to wife's property decided by judge, subject to appeal.

Making and registration of orders under Chapter.

Order endorsed on deed and registered there-with.

Registrar's fees.

Endorsed order may refer to description in deed

84. No conveyance or other act of a wife in respect of her real estate shall deprive her husband, without his consent, of any estate he may become entitled to as tenant by the curtesy, except as herein otherwise provided.

85. No will nor any devise or bequest in any will made by any married woman, shall be void by reason of any devise or bequest, or of any gift or disposition to or for the use or benefit of her husband, except as in this Chapter otherwise provided.

86. A husband shall in no case be the guardian of his wife, nor a wife the guardian of husband.

87. In any question between husband and wife as to property declared or deemed to be declared by this Chapter to be the separate property of the wife, either party may apply to a judge for such order as he or she shall desire; and thereupon such judge shall make such order, direct such inquiry, and award such costs as he shall think fit: Provided that any order made by such judge shall be subject to appeal in the same manner as the order of the same judge made in a pending action or suit at law or in equity would, have been; and the judge may if either party so require hear the application in his private room.

88. Any order granted under this Chapter may be in duplicate or in as many parts as are necessary, and shall be signed by the judge granting the same; and where the same affects the title to real estate a duplicate or counterpart order, or a copy of such order certified by the prothonotary of the Supreme Court or the clerk of the County Court, as the case may be, may be recorded in the registry of deeds for the county or district wherein the lands to which the same relates are situate, upon its production and deposit, without any further proof thereof; and such recording may take place either before or after the execution of the deed made in pursuance of such order.

89. Any such order relating to a deed may if desired be endorsed or written upon the deed to which the same relates, in which case it shall be registered as part of the deed.

90. For the registration of any such order, including all necessary entries and certificates, the registrar shall be entitled to a fee of one dollar, unless the order is endorsed or written upon the deed, in which case the registrar shall be entitled to be paid as if the order formed a portion of the deed, and not otherwise.

91. If any such order is endorsed or written upon the deed, to be made in pursuance thereof, the real estate to which the same relates may be described in the order by reference to the description contained in the deed.

92. The affidavits and papers upon which the order is obtained shall be filed in the office of the prothonotary or clerk of the court of which the judge granting the order is a judge; and for filing such affidavits and papers the prothonotary or clerk shall be entitled to the same fees as he is entitled to for filing similar papers in other cases.

CHAP. 94.

Papers, where filed.

Fees.

93. Any agreement in writing made before marriage between the intended husband and the intended wife, or her father, guardian or trustee, as to the religion in which the children of the intended marriage or any of them shall be brought up or educated, shall bind the husband and wife after marriage and their legal representatives, unless changed by mutual consent expressed in writing.

Pre-nuptial agreement as to creed of children, binding.

94. A woman guilty of adultery which has not been condoned by the husband, shall not be entitled to dower, nor be capable of taking advantage of any of the privileges conferred by this Chapter.

Woman guilty of adultery not entitled to dower, &amp;c.

95. A married woman carrying on business under this Chapter, whether by virtue of a protection order or of her husband's concurrence as hereinbefore provided, shall enjoy all the advantages and be subject to all the liabilities arising under the laws as to insolvent debtors for the time being in force in this Province.

Married woman trading under Chapter, subject to insolvent debtor laws.

96. Nothing in this Chapter contained shall defeat or invalidate any voluntary agreement for the separation of husband and wife; but such agreement may be made and entered into and enforced, as if this Chapter had not been passed.

Chapter not to invalidate agreements for separation.

97. The Supreme Court or a majority of the judges thereof shall have power, and it shall be their duty, to make all such rules as they shall deem necessary or desirable for the more effectual carrying out of the purposes of this Chapter, including (amongst other things) the regulation of the procedure thereunder and the fees to be paid for the various services necessarily performed; and such rules, when not inconsistent with this Chapter, nor with any future enactment for the time being in force in this Province, shall from and after their publication in the *Royal Gazette* have the force of law.

Supreme Court to make rules under this Chapter.

98. In all cases not provided for by this Chapter or by rules made under the next preceding section, the practice and fees shall be the same as in the Supreme Court in similar cases and for similar services, and the fees payable to registrars of deeds for recording and filing papers under this Chapter shall be regulated by the existing tariff.

Practice and fees in unprovided for cases.

CHAP. 94. 99. Nothing in this Chapter shall affect the rights of  
 any party to a suit actually begun before the nineteenth  
 day of April, A. D. 1884, nor shall anything herein abridge  
 the authority of the Court for Divorce and Matrimonial  
 Causes.

Chapter not af-  
fect pending  
suits, nor Di-  
vorce Court.

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SCHEDULES.

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A.

*Certificate of Wife's Acknowledgment of her Execution of  
 a Deed.*

Province of Nova Scotia, }  
 SS. }

Be it remembered that on this \_\_\_\_\_ day of \_\_\_\_\_,  
 A. D. 18—, before me, the subscriber, personally came and  
 appeared C. D., wife of A. B., mentioned in the foregoing  
 Indenture, who, having been by me examined separate and  
 apart from her said husband, did declare and acknowledge  
 that she executed the said Indenture, as and for her act  
 and deed, without fear, threat or compulsion, of, from, or  
 by her said husband, and for a full release of all her claims  
 to the land (*or, as the case may be*) therein described.

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B.

*Judge's Order Dispensing with Husband's Concurrence  
 in a Deed.*

“Married Women's Property Act, 1884.”

Upon application of C. D., of \_\_\_\_\_, the wife of A. B.,  
 of \_\_\_\_\_, (*or formerly of \_\_\_\_\_*), I, one of the Judges of  
 the Supreme Court of the Province of Nova Scotia, (*or, as  
 the case may be*), do, pursuant to the “Married Women's  
 Property Act, 1884,” order that the said C. D. may, in the  
 same manner and with the same effect as if she were an  
 unmarried woman, bargain, sell and convey (*or, appoint an  
 attorney or attorneys to bargain, sell and convey*) all or any  
 part of her estate, title, and interest, of, in, to or out of all  
 and singular (*describe the premises*) [*or bar her dower or*

right, or inchoate right of dower, (or appoint an attorney to bar her dower, or right or inchoate right of dower, as the case may be) in, to or out of all and singular (*describe the premises*)].

Dated this — day of —, A. D. 18—.

(Signature of judge.)

C.

*Certificate of Married Woman's Acknowledgment of Execution of Will.*

Province of Nova Scotia, }  
SS.

Be it remembered that on this — day of —, A. D. 18—, before me, the subscriber, —, personally came and appeared C. D., of —, wife of A. B., of —, the testatrix mentioned in the foregoing (*or, within*) Will, who, having been by me examined separate and apart from her said husband, did declare and acknowledge that she executed the said Will freely and voluntarily, as and for her own act and deed, and without any fear, threat, compulsion, or other undue influence whatsoever, of, from or by her said husband.

## CHAPTER 95.

### OF THE PREVENTION AND PUNISHMENT OF WRONGS TO CHILDREN.

1. No minor under the age of sixteen years shall be admitted at any time to, or permitted to remain in, any saloon or place of entertainment where any spirituous liquors or wines or intoxicating or malt liquors are sold, exchanged, or given away, or in any of the places of amusement known as dance houses, billiard rooms, cippi rooms, dancing classes, clubs, or concert saloons, unless accompanied by his or her parent or guardian, nor into any bawdy house or house of ill fame under any circumstances whatever. No proprietor, keeper or manager of

Minors not to frequent saloons, &c.



**CHAP. 95.** any such place, shall admit such minor to, or permit him or her to remain, in any such place, unless under the condition hereinbefore mentioned; provided that in the case of dancing classes only the written permission of the parent or guardian shall be sufficient authority for the proprietor, keeper, or manager to allow or permit the attendance of such minor.

Officers entitled to visit premises, &c.

2. It shall be lawful for any justice of the peace, sheriff, constable, or police officer at all times to enter in and upon any of the premises mentioned in the previous clause, in order to ascertain if there be any minors under the age of sixteen therein; and if any such be found therein, to take them into custody and bring them before a justice of the peace for examination. All persons upon being required by any of the said officers to open their said premises and grant free admission to the same, shall do so immediately, and any person or persons who shall refuse admission to his, her or their premises, or who shall obstruct any such officer in the performance of his duty, shall be guilty of an offence under this Chapter.

Children treated cruelly, &c., how disposed of.

3. Whenever the parent or other person having the care and custody of a child within the age previously mentioned in this Chapter, is convicted before any court or magistrate with having assaulted, beaten, illused, abandoned or treated said child with habitual cruelty and neglect, or said child is suffered to grow up without salutary parental control, or in circumstances exposing him or her to lead an idle and dissolute life, and the court or magistrate before whom such conviction is had deems it desirable for the welfare of such child that the person so convicted should be deprived of its custody thereafter, such court or magistrate may commit such child to an orphan asylum, charitable or other institution, or make such other disposition thereof as now is or hereafter may be provided by law in cases of vagrant, truant, disorderly, pauper or destitute children.

Proof of age to be on party charged.

4. Whenever any person is charged with an offence against this Chapter in respect of a child, who in the opinion of the court trying the case is apparently of the age alleged by the informant, it shall lie on the person charged to prove that the child is not of that age.

Forfeiture, &c., on conviction of party.

5. Any person convicted of any offence against any of the provisions of this Chapter before any two or more justices of the peace for the district, county or place in which the offence has been committed, or before some magistrate or officer sitting alone or with others at some court or other place appointed for the administration of justice within such district, county or place, and for the

time being empowered to do alone any act authorized to be done by more than one justice of the peace, shall, on summary conviction, for every such offence forfeit and pay such sum of money, not exceeding one hundred dollars, nor less than twenty dollars, with full costs, as to such justices, magistrate or officer shall seem fit. CHAP. 96.

6. The offender shall, in default of payment, be committed to the common gaol, or other place of confinement for the district, county or place in which the offence was committed, there to be imprisoned for any time not exceeding ninety days, or less than thirty days. Imprisonment in default of payment.

7. All fines, penalties and forfeitures imposed and collected under the provisions of this Chapter, and every Act passed or which may be passed relating to or affecting children, in any case where the prosecution is instituted by a society incorporated for the prevention of cruelty to children, or for the prevention of cruelty to animals, shall inure to such society in aid of the purposes for which it is incorporated. Fines, &c., how disposed of.

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## CHAPTER 96.

### OF GUARDIANS AND WARDS.

1. The father of unmarried children under the age of twenty-one years may by any instrument in writing executed in the presence of two witnesses dispose of the custody and tuition of such children, or of any child who at the time of his father's death may be unborn, so long as they shall respectively remain under the age of twenty-one years, or for any shorter period; and the father may make such disposition though he be not himself of the age of twenty-one years. Guardians may be appointed by father.

2. Judges of probate may appoint guardians to minors where none have been appointed by the father, the next of kin to be appointed if any of them shall apply, unless on special cause shown the judge of probate shall decide to the contrary, otherwise such person as the judge shall think proper; but if the minor be of the age of fourteen years, or having had a guardian appointed by the judge of probate shall arrive at the age of fourteen years, he may appoint his own guardian, and such appointment shall be confirmed by the judge of probate on the guardian giving the security hereinafter specified. Guardians, when and how appointed by judge of probate.

## CHAP. 97.

Powers of guardians.

3. All guardians appointed under the provisions of this Chapter shall have the exclusive control of their wards, and may maintain actions against any persons who shall take them away or detain them, and shall recover damages for their benefit. They may take possession of all their property, real and personal, receive the rents and profits thereof, and manage the same during the period of their guardianship, and may maintain all actions at law or in equity in relation thereto, as such children could do if of full age.

Bonds to be given, their conditions.

4. Every guardian appointed by the judge of probate, or nominated by the minor and confirmed by him, shall previous to the letters of guardianship being issued, file in the Probate Court a bond, with two sureties to be approved of by the judge, and to be taken in his name, with a condition that he will faithfully manage and dispose to the best advantage of the property of the minor committed to his care, that he will not commit waste thereon, and will render a just account thereof to the Court of Probate when required, and to the ward when he shall come of age.

Letters, how applied for, and when granted.

5. No letters of guardianship shall be granted by any judge of probate unless application therefor be made by the minor or some near relation of his, or by the executors or administrators of an estate in which the minor is interested; and the judge upon such application may appoint guardians in any suit pending before him, for the purposes of such suit without requiring a bond.

Apprenticeships entered upon, not affected thereby.

6. The provisions of this Chapter shall not affect any apprenticeship which may legally have been entered into by or on behalf of any minor, or by any overseers or commissioners of the poor.

## CHAPTER 97.

## OF THE GUARDIANSHIP AND CARE OF DRUNKARDS.

Interpretation clause.

1. In construing this Chapter the word "interdiction" shall mean the declaring incapable by reason of habitual drunkenness by any person of the management of his or her business and affairs as of an insane person under Chapter 38 of the Revised Statutes, fifth series.

Judge of Supreme Court on petition under oath setting forth cause may interdict habitual drunkard.

2. On petition under oath presented to any one of the judges of the Supreme Court of Nova Scotia, whether by any relative, friend or creditor of any habitual drunkard, setting forth that by reason of such drunkenness such habitual drunkard either squanders or mismanages his

CHAP. 97.

property, or places his family in trouble or distress, or transacts his business prejudicially to the interests of his family, his friends or his creditors, or that he uses intoxicating liquors to such an extent that he incurs the danger of ruining his health and shortening his life thereby, such judge, for any of such reasons established before him to his satisfaction, may pronounce the interdiction of such habitual drunkard, and appoint a guardian to him to manage his affairs and control his person, as in the case of a guardian for an insane person or lunatic.

3. The interdiction of such habitual drunkard shall be proceeded with before a judge by summoning before such judge, at any term of the Supreme Court held in the county in which such habitual drunkard resides, or at any other convenient time, reliable witnesses, and by taking the opinion and testimony under oath of such witnesses as may be produced, or as the judge may require, as to the truth of the fact of the person whose interdiction is proposed being an habitual drunkard and as to the necessity of such interdiction.

Interdiction to be proceeded with before judge by taking opinion and testimony under oath of witnesses

4. The interdiction of any person under the provisions of this Chapter shall have the same effects as those conferred by the law in this Province in the case of lunatics and insane persons under chapter 38 of the Revised Statutes, and the allowance to the person interdicted, the payment of debts and suits by and against him, the arrangement of the estate, and the bond by the guardian, shall be regulated as nearly as possible by the provisions of the said chapter.

Effect of interdiction.

5. In proceeding to the interdiction of any person for habitual drunkenness it shall not be necessary that the proof of any of the facts to be established for such purpose before the judge be taken in writing, nor that the person whom it is sought to interdict be interrogated before the judge, but it shall be sufficient that the judge be satisfied with the oral evidence given before him, by the relations whether of blood or by affinity, or friends, or other evidence.

Evidence need not be written down, nor person to be interdicted interrogated.

6. The petition praying for the interdiction of any habitual drunkard shall be personally served upon him at a time when he shall be sober, at least fourteen days before the day fixed for the appearance before the judge for the purpose of the interdiction.

Petition to be personally served; and when.

7. It shall be lawful for the person whose interdiction shall be thus demanded, to produce before the judge witnesses to contradict the allegations of the petition and the evidence under the petition, and each party may retain an advocate and counsel to conduct the proceedings on his

Person sought to be interdicted may produce evidence.

CHAP. 97. behalf, and to examine the witnesses before the judge, who may require from the person instituting the demand in interdiction further evidence of the facts alleged in the said petition, in addition to that at first produced. But as hereinbefore set forth, all evidence given before the judge shall be *viva voce* or taken in writing, as the judge shall deem proper.

Decision of judge final. 8. The decision of the judge shall be final and without appeal, whether he grants the interdiction or rejects the demand therefor.

Renewed application. 9. If any demand in interdiction under this Chapter be rejected the same shall not be renewed before the expiration of three calendar months.

Removal of interdiction. 10. Any person interdicted as an habitual drunkard may be relieved from such interdiction after one year's sober habits, on application by petition to a judge for such purpose and on proof to the satisfaction of such judge that such interdicted person has been of sober habits for one year next preceding the presentation of his petition. The judge may in his discretion require notice of such application, and of the time of hearing the same, to be served on the guardian or other party interested, in such manner as he may deem proper, and may examine on oath such witnesses as may be produced by either party in support of or against such application. The person interdicted shall not regain the exercise of his civil rights until after the judgment removing the interdiction.

Guardian. 11. The son, of full age, of any person interdicted for habitual drunkenness, may be appointed his guardian.

Penalty for supplying liquor to interdicted person. 12. Whosoever shall wilfully sell or give to or procure for any person interdicted under this Chapter, intoxicating liquors, shall incur for each offence a penalty of fifty dollars, recoverable by the guardian for and in behalf of the family of the person interdicted by summary proceeding within three calendar months from the commission of such offence, before any two justices of the peace of the district in which the offence shall have been committed, and in default of payment of the said penalty, together with the costs of suit, within the time fixed by the said justices of the peace, the offender shall be imprisoned in the common gaol for the space and term of three calendar months, unless the said penalty and costs and the costs of the imprisonment and of the conveyance of the defendant to the said gaol be sooner paid.

Evidence of being an habitual drunkard. 13. Any person who according to the common report of the neighborhood has the reputation of being a drunkard, shall be deemed to be an habitual drunkard according to the intent and meaning of this Chapter.

14. All proceedings under this Chapter shall be summary, and the forms hereunto annexed or any other analagous forms, shall be sufficient, and the same shall not be attacked for any error in form before any court.

CHAP. 97.  
Proceedings to be summary.

15. The name of every person interdicted under this Chapter shall be inscribed in a book to be kept in the office of the registry of probate for the county where the said person interdicted resided at the date of the petition.

Names of interdicted persons registered in Probate Office.

16. The Governor by and with the advice of the Executive Council may grant a license to keep an asylum for the use of drunkards, to the person or persons who may appear to deserve the same.

License for asylum for drunkards.

17. The granting of the said license and the continuation thereof, shall be subject to the orders and regulations passed in respect thereof by the Governor-in-Council, who shall at the same time define the powers and privileges, and also the duties and obligations, of the proprietor, manager, director or directors of the said institution.

Subject to the orders of Governor-in-Council.

18. The guardian of any person interdicted under this Chapter may place the person interdicted whose guardian he is in any duly licensed institution for the cure of drunkards, upon such terms as may be agreed on between such guardian and the director or directors of such institution, and may remove him from the same whenever he shall deem it desirable after having received a certificate from the medical officer or manager of such institution, that in his opinion the person so interdicted has been cured or is not likely to derive further benefit from longer detention and treatment in such institution.

Guardian may place interdicted person in asylum.

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## SCHEDULES.

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### A.

#### *Form of Petition for Interdiction.*

Province of Nova Scotia,  
County of

To the Hon. A. B. one of the Judges of the Supreme Court of Nova Scotia.

C. D., of                      in the County of                      (*occupation*)  
by this his petition respectfully represents:—

That for about                      year E. F. of                      .  
in the said County of                      has been an habitual  
drunkard, and that by reason of his drunkenness he

CHAP. 97. squanders (or mismanages) his property (or places his family in trouble or distress, or transacts his business prejudicially to the interests of his family or his relations, or of his creditors, *as the case may be*), and that therefore it is desirable that under the statute in such case made and provided the said E. F. be interdicted as an habitual drunkard.

Wherefore, your petitioner prays that the interdiction of the said E. F. as an habitual drunkard, in accordance with the statute in such case made and provided, be pronounced.

C. D.



B.

*Form of Affidavit which must accompany the Petition praying for the Interdiction.*

C. D. of \_\_\_\_\_ in the County of \_\_\_\_\_ the petitioner named in the foregoing petition, being duly sworn, doth depose and say that the facts alleged in the foregoing petition are true, and that the said petition hath not been made through malice nor with a view to oppress.

Sworn at	in the	} C. D.
County of	this	
day of	A. D. 18	
before me.	G. H.	

Commissioner of the Supreme Court,  
for the County of \_\_\_\_\_



C.

*Form of the Judge's Order to proceed to the Interdiction.*

Considering the foregoing petition and affidavit, let the said E. F. in the said petition mentioned appear before me in chambers in the \_\_\_\_\_ at \_\_\_\_\_ in the County of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18 \_\_\_\_\_ at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, for the purpose of proceeding on the said petition.

A. B.

## CHAPTER 98.

## OF MASTERS, APPRENTICES AND SERVANTS.

1. All children under the age of fourteen years may be bound as apprentices or servants until that age, and all minors above the age of fourteen years may be bound as apprentices or servants; females to the age of eighteen years or to the time of their marriage within that age, and males to the age of twenty-one years, in the manner prescribed in this Chapter.

Minors may be bound apprentices, &c.

2. Children under the age of fourteen years may be bound by their father, or in case of his death or incompetency, by their mother, or by their legal guardian, and if illegitimate they may be bound by their mother; and if they have no parent competent to act, and no guardian, they may bind themselves with the approbation of two justices of the peace.

Under fourteen years, how bound.

3. Minors above the age of fourteen years may be bound in the same manner; provided that when they are bound by their parent or guardian the consent of the minor shall be expressed in the indenture and testified by his signing the same.

Above fourteen, how bound.

4. No minor shall be bound otherwise than by an indenture of two parts, sealed and delivered by both parties; and when made with the approbation of the justices of the peace, their approbation shall be certified in writing, signed by them upon each part of the indenture.

Indenture to be of two parts, &c.

5. One part of the indenture shall be kept for the use of the minor by his parent or guardian when executed by them respectively, and when made with the approbation of two justices of the peace, it shall be deposited with the town clerk or clerk of the municipality, and be safely kept in his office for the use of the minor.

Custody of minor's part of indenture.

6. The overseers of the poor may bind as apprentices or servants the minor children of any poor person who has become chargeable to the district as having a lawful settlement therein, or who is supported there in whole or in part at the charge of the district; and also all minor children who are themselves chargeable to the district as having a lawful settlement therein, or as poor persons supported by the district.

Overseers of poor may bind out pauper minors.

7. Such children, whether under or above the age of fourteen years may be bound, females to the age of eighteen years or to the time of their marriage within that age, and males to the age of twenty-one years; and provision shall be made in the contract for teaching such children to read,

Terms of contract of indenture.



CHAP. 98. write and cipher, and for such other instruction, benefit and allowance, either within or at the end of the term, as the overseers may think reasonable.

Minors, how bound by overseers.

8. No minor shall be bound by the overseers unless by an indenture of two parts, sealed and delivered by the overseers and by the master, one part of which shall be deposited with the town clerk or clerk of the municipality, and be safely kept by him for the use of the minor.

Money, &c., paid or allowed by master, to be for apprentice.

9. All considerations of money or other things paid or allowed by the master upon any contract of service or apprenticeship made in pursuance of this Chapter, shall be paid or secured to the sole use of the minor thereby bound.

Duty of parents, guardians, and overseers.

10. Parents and guardians and overseers shall inquire into the treatment of all children bound by them respectively, or with their approbation, and of all who shall have been bound by their predecessors in office, and defend them from all cruelty, neglect and breach of contract on the part of their masters.

Proceedings for misconduct of master.

11. In case of any misconduct or neglect of the master, a complaint may be made in writing by the parents, guardian, or overseers, to any two justices of the peace for the county in which the master resides, setting forth the facts and circumstances of the case; and the justices, after having duly notified the master, shall proceed to hear and determine the same.

Hearing, and power of justices to afford redress.

12. After a full hearing of the parties, or of the complainants alone if the master shall neglect to appear, the justices may order that the minor be discharged from his apprenticeship or service, and give the costs of suit against the master, and may award execution accordingly, and the minor may be thereupon bound out anew.

Proceedings where the complaint dismissed.

13. If the complaint shall not be maintained, the justices shall award costs for the master against the complainants, and shall issue execution accordingly, excepting that in case of such a complaint by overseers, the justices shall not award costs against them, unless it shall appear that the complaint was made without reasonable cause.

Appeal.

14. Any person feeling himself aggrieved by the order of any justices under the three preceding sections, may appeal therefrom to the Supreme Court at its next term in the county, and such appeal shall be granted and determined in the same manner as in civil suits.

Apprentice guilty of misconduct, how punished.

15. If any apprentice or servant bound as in this Chapter shall unlawfully depart from the service of his master, or shall be guilty of any gross misbehaviour, or refusal to do his duty, or wilful neglect thereof, any justice of the peace, upon complaint on oath made to him by the

master, or by any one on his behalf, may issue his warrant CHAP. 99.  
 to apprehend the apprentice or servant and bring him  
 before the same or any other justice ; and if the complaint  
 shall be supported, the justice may order the offender to be  
 returned to his master, or may commit him to the common  
 gaol for a term not exceeding twenty days, unless sooner  
 discharged by his master.

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## CHAPTER 99.

### OF THE TRANSFER OF ARTICLES OF INDENTURE OF APPRENTICESHIP.

1. Indentures of apprenticeship or transfers of minors entered into in the United Kingdom, shall be in all respects binding in this Province. Indentures made in the United Kingdom.

2. An agreement entered into in writing by the parent or next of kin of a minor, to assign all rights whatever over such minor to a third person named in such agreement, shall be considered a transfer of guardianship, and shall be binding, in the case of males until they attain the age of twenty-one years, and in the case of females until the age of twenty-one, unless sooner married. Transfer of guardianship.

3. In the case of children taken into charitable institutions or "refuges" or "homes," over whom all rights of guardianship are assigned by their guardians or relatives to the committee or managers of such institutions, such managers or representatives of committee shall be considered and recognized as the legal guardians of such children, and shall have power to transfer all rights of guardianship; recognized agents, and such persons so qualified as legal guardians, or the agents of such persons, shall have full power to bind out any such child or children, and transfer all rights of guardianship to any person or persons willing to receive such child or children and contracting in writing to fulfil such obligations, as may be required by law of a parent or guardian. Managers of charitable institutions when deemed guardians; their powers.

4. The signatures of any such person giving over, and of such person taking over, the guardianship of a child or children, to a document accepting this undertaking, shall be proof in law of such agreement. Agreement of transfer, how proved.

5. It shall not be necessary that a separate document be prepared in the case of each child so assigned; but a document headed with the contract of agreement, and Several children may be included in one agreement.

CHAP. 99. bearing the signature of each person accepting the guardianship of a child opposite the name of the child so bound over, shall be legal proof of such acceptance, and the signature to such document of the person giving over the guardianship shall be legal proof of the transfer of guardianship.

Certain powers retained where child placed out under section 3. 6. In the case of a child placed out in this Province, as expressed in section three of this Chapter, the agent of the committee shall retain all powers of supervision and removal as reserved by him in the contract of transfer of guardianship.

Penalty for aiding child to leave guardian. 7. Any person who shall take away or induce any child to leave the employ of any such guardian so appointed, or who shall, without the consent in writing of the appointed guardian and of the agent of the committee, take into his house or in any way harbor any minor bound over as provided in the third section of this Chapter, shall upon conviction thereof before two justices be fined the sum of forty dollars.

Agreement, proof of guardianship. 8. The production of the document mentioned in the fourth and fifth sections of this Chapter, duly signed as therein mentioned, shall be held to be legal proof of guardianship.

Application of Chapter. 9. This Chapter shall apply only to children brought into this Province from abroad, and so far as applicable shall extend to the orphan children of deceased Protestant parents, received into and trained at the Protestant Orphans' Home in the City of Halifax.

## PART III.

### OF COURTS, PROCEDURE, AND REMEDIES.

#### TITLE XXIII.

##### OF COURTS: THEIR CONSTITUTION, JURISDICTION, AND PROCEDURE.

###### CHAPTER 100.

###### OF THE PROBATE COURT AND PROCEDURE THEREIN.

1. The judge and registrar of probate in each county and district wherein a Probate Court is now established, shall be appointed by the Governor-in-Council, and hold office during pleasure, and shall be sworn before a judge of the Supreme Court, or the warden of the county or district. The registrar of probate, before entering upon the duties of his office, shall give bonds to Her Majesty, with such sureties, to such amount, and in such form as the Governor-in-Council may direct, for the faithful performance of the duties of his office, and the indemnifying of all parties who may be injured by his default or misconduct, and shall further satisfy the Governor-in-Council that he has provided a suitable place for the custody of all wills, papers, documents and books connected with his office which may come to his charge or keeping.

Judge and registrar, how appointed and sworn.

Registrar to give bonds.

2. The judge of probate for the county or district wherein the deceased last dwelt shall have power to grant letters testamentary or letters of administration of his estate; but he shall observe the rules of section eleven in making such appointment; and it shall be lawful for the judge of probate, on the application of sureties, or any person interested in the estate, to cancel letters of administration granted in any estate, and to grant others in lieu thereof, in any case where it shall be made to appear to his satisfaction that the administrator has left the Province without any apparent intention of returning,

Judge of county or district where deceased last dwelt to grant probate.

May cancel same.

CHAP. 100. or is wasting the assets of the estate, or has become insolvent, *non compos mentis*, or otherwise incapacitated from discharging the duties of his office; but no such order or decree shall be made until such administrator has been duly cited to appear before said judge, and he be made to account under oath. Before granting letters of administration, or an order to sell, mortgage or lease any real estate, the judge of probate may require the sureties on the bonds to justify before himself or registrar in such reasonable sum as he shall deem fit, having regard to the value of the property.

Sureties required to justify.

When deceased died out of the Province.

3. When the deceased shall die out of the Province, the judge of probate for the county or district wherein any estate of such deceased person may lie, if letters testamentary or letters of administration have not been previously granted within this Province, shall have power to grant the same,

Judge, when incapacitated, may appoint surrogate to act.

4. When the judge of probate shall be ill, or is about to be temporarily absent and out of the jurisdiction of the court, or shall be a witness in any contestation in the Probate Court, or shall be interested in the estate of the deceased as heir, legatee, debtor or creditor, to the extent of two hundred dollars or upwards, or when a person so interested, or who having been engaged in such estate in any matter pending in the Probate Court, as proctor, solicitor, advocate, attorney, or otherwise, shall be appointed or be such judge of probate, he shall have power, subject to the approval of the Governor-in-Council, to appoint a surrogate to act in his place and stead, and such surrogate, during such illness or temporary absence, and in all said matters in which said judge shall be a witness or shall be so interested, or which shall be so pending as aforesaid, shall possess all the powers and discharge the duties of the said judge of probate.

Applications to court to be in writing.

5. All applications for the probate of wills or letters of administration or citations shall be made in writing; all other official acts and orders shall be in writing.

Registrar to enter applications.

6. The registrar of the Court of Probate shall enter such application in the Act Book, and shall submit the same to the judge for his *fiat* therein.

Applications for filing wills proved out of Province; proceedings thereon.

7. Whenever application shall be made to a judge of probate for filing and recording a copy of a will proved without the Province, the testator having real or personal property within his jurisdiction, he shall order the registrar to give public notice in the *Royal Gazette* newspaper at Halifax, of the application and of the time and place when the application will be heard.

8. In all cases of application for letters of administration or probate, when the party or any one of several parties entitled to administration or probate is without the Province, the judge shall reserve the right of such absent person, but shall proceed notwithstanding.

CHAP. 100.  
Rights of absent parties reserved.

9. The testimony adduced before any judge of probate in relation to the proof of any will, or in any controversy before him, shall be reduced to writing and filed.

Evidence to be written and filed.

10. When any will shall be offered for probate, and the witnesses live out of the Province, or more than thirty miles distant, or by reason of age or sickness are unable to appear and give evidence in court, the deposition of such witnesses in writing, taken before any person duly authorized by the judge of probate, shall have the same force and effect as if such witnesses were present and testified in open court; and all oaths required to be taken or administered under this Chapter shall be sufficiently taken or administered if sworn before a commissioner of the Supreme Court for taking affidavits, except in proof of a will or codicil or other testamentary paper offered for probate.

Wills, how proved when witness absent or sick.

11. Administration of an intestate estate shall be granted to some one or more of the persons hereinafter mentioned, and they shall respectively be entitled thereto in the following order:—

Administration, to whom granted, and in what order.

*First.*—The widow or next of kin, or both, as the judge of probate shall think fit; and if they do not voluntarily either take or renounce administration, they shall, if resident within the county, be cited by the judge for that purpose.

*Secondly.*—If the persons so entitled when so duly cited shall not claim and proceed to take administration within ten days after the return day of the citation, the judge of probate may commit it to one or more of the principal creditors, if competent and willing to undertake the trust, or to any other person on the application of one or more of the creditors, duly proved to be such, as he shall think fit.

*Thirdly.*—If the deceased were a married woman, administration of her estate shall be granted to her husband, if willing to undertake the same, unless she shall by force of a marriage settlement or other lawful power have made some testamentary disposition of her separate estate, or some other disposition which shall render it necessary or proper to appoint some other person to administer her estate.

12. In case such of the next of kin as shall be considered by the judge best qualified to administer in any estate shall desire it, the judge may associate with him

Judge may associate another with next of kin.

**CHAP. 100.** in the administration such person as he may think fit and proper for that purpose.

Administrator of person dying out of Province appointed in last domicile, to be preferred in Province.

13. When administration of the estate of any person dying out of the Province shall have been granted in the place where the deceased was last domiciled out of the Province, and the person to whom the same was granted shall apply to have administration of such part of the estate as may be within the Province, he shall be preferably entitled thereto, and the administration to him granted by the judge of probate shall supersede any other administration thereof.

Administrator to give a bond.

14. Every administrator shall before entering on the execution of his trust, give bond with two sureties to be approved of by the judge, in such sum as he shall order, and in the form in the annexed schedule.

Administrator may be required to enter into new bond.

15. The judge of probate may if he shall think fit, on summary application and due proof that any bondsman on any administration bond has died or become insolvent, order the administrator to enter into a new bond with two sureties, to be approved by the judge, in such sum as he shall order; and if the administrator shall not obey such order may cancel his authority, and thereupon proceed to appoint a new administrator in the same manner as if such administrator were deceased.

Form of bond on new administration.

16. The bond to be taken on such new administration shall be as nearly as may be in the form of the administration bond, making the necessary alterations.

Oaths in writing.

17. Every oath administered to an executor or administrator on entering into office, shall be subscribed in writing.

Inventory filed within three months.

18. The executor or administrator to whom letters testamentary or letters of administration shall have been granted, shall within three months thereafter, unless the court on petition allow further time therefor, exhibit and file in the registrar's office upon oath a full and true inventory of the real and personal estate of the deceased, which shall have come to his possession or knowledge.

Further inventory may be filed.

19. If any real or personal estate of the deceased shall come to the possession or knowledge of the executor or administrator after he shall have filed such inventory, he shall within a reasonable time thereafter file in the registrar's office a further inventory of the same upon oath.

Fine for neglecting to file inventory.

20. Any executor or administrator neglecting to file an inventory after having been duly cited to file the same, shall forfeit twenty dollars for each month's neglect, to be recovered by any person having an interest in the estate of the deceased, in an action of debt.

21. In making the inventory the following articles shall be omitted, and shall not be considered as assets, nor be administered as such, notwithstanding the estate of the deceased should be insolvent, viz.:

CHAP. 100.

Articles to be omitted from inventory.

*First.*—All the paraphernalia and articles of apparel or ornament of the widow, according to the degree and estate of her husband, and also the apparel of the minor children.

*Secondly.*—The wearing apparel of the deceased not exceeding forty dollars in value, which shall be distributed, at the discretion of the executor or administrator, among the family of the deceased.

*Thirdly.*—Such provisions and other articles as shall be necessary for the reasonable sustenance of the widow and the family of the deceased for ninety days after his death.

22. The judge on granting letters of administration or letters testamentary, and as often afterwards as may become necessary or advisable, shall by a warrant of appraisement appoint two or more disinterested persons to estimate and appraise all the real and personal estate of the testator or intestate; and such appraisers shall be entitled to receive a reasonable compensation for their services for the time they may be actually employed, not exceeding two dollars for each person per day.

Warrant of appraisement; how issued.

Fees.

23. When appraisers are so appointed the inventory shall be made by the executor or administrator with the aid of such appraisers; and when property shall be in different and distinct places two or more inventories may be made; and every such warrant of appraisement shall be returned and filed in the registry of probate with the inventory.

When property in different place, may be two or more inventories.

Warrant filed with inventory.

24. Before proceeding to make the appraisement the appraisers shall be sworn by the judge or registrar, or a justice of the peace, truly and impartially to appraise the property which may be exhibited to them according to the best of their knowledge and ability. The taking of the oath shall be certified on the warrant of appraisement by the person administering the same.

Appraiser's oath, before whom sworn.

Certificate to be on warrant.

25. Every executor or administrator, previous to the payments of debts or distribution of the estate of the deceased, shall by advertisement in the *Royal Gazette* newspaper, in all cases where the estate shall be under eight hundred dollars for one month, and in other cases for six months, call on all persons who have any demands upon the estate of the deceased, to exhibit such demands within one year from the date of the advertisement; all which demands when exhibited shall be attested to by the party, or in his absence from the Province by his agent, before the judge or registrar or a justice of the peace;

Executors, &c., to advertise in *Gazette*; accounts attested according to form; cases of informal attestation provided against.



CHAP. 100. and the affidavit shall be in the form in the annexed schedule; but no account shall be rejected by a judge in his final decree for any mere informality in the same, or the attestation thereof, unless he shall be satisfied that the party claiming to be a creditor shall have had notice of such informality.

License for sale of real estate when personal property insufficient to pay debts.

26. In case the personal estate of the deceased shall be found by the judge on affidavit insufficient for the payment of his debts and legacies, such judge, on security being given by the administrator or executor to account for the proceeds of the sale or sum obtained by mortgaging or leasing the same, may at his discretion grant a license for the sale of the whole or such part of the real estate of the deceased as he shall deem necessary, or for the mortgaging or leasing thereof; provided such lease be for a term not exceeding twenty-one years. Provided that no such license shall be granted unless the affidavit shall set forth a full and detailed statement of the claims against such estate, and a further statement showing the personal assets collected, and his belief that such claims are *bonâ fide*, and provided further that if any party interested in said estate shall before the day of sale, mortgaging or leasing of the same, petition the judge against the granting of such license, or for the revocation thereof, and praying that an enquiry may be had as to the necessity of such sale, mortgaging or leasing, it shall be the duty of the judge to postpone the sale, mortgaging or leasing for such reasonable time as he may deem proper, and to order the parties interested to be cited before him. If after hearing the parties and the evidence that may be adduced he shall be satisfied that the granting thereof was unnecessary, he shall forthwith revoke such license; but if he shall deem the objection made to have been frivolous, the party so objecting shall pay the costs of the application, as well as all costs incurred in postponing.

License in force for one year only.

27. No such license shall be in force more than one year after the granting thereof.

License entered and registered.

28. Every license shall be entered in the registrar's book, and a copy thereof duly certified by the judge or registrar shall be registered in the office of the registrar of deeds for the county or district in which the real estate may lie, and such certified copy, or a copy thereof from the registry certified under the hand of such registrar of deeds, shall be evidence of such license in all courts without further proof.

Certified copy, evidence.

Security for license given by bond.

29. The security to be given by any executor or administrator before the granting of such license, shall be a bond to the judge of the Court of Probate in a sufficient

penalty with two sureties to be approved by him, the bond CHAP. 100.  
to be in the form in the schedule.

30. In case any executor or administrator shall not give such security within a reasonable time, the judge may, on the application of any person interested, order such executor or administrator having been first duly cited to give such security within a period to be named in the order; and if such executor or administrator without sufficient cause shall neglect so to do, the judge may appoint some other person interested in the estate to act as administrator for the sale of the real estate and appropriation of the proceeds, upon his giving the security required.

In case executor shall not give security, judge may appoint another person to act.

31. When any part of the real estate of the testator has been undevise<sup>d</sup>, and the personal estate shall be insufficient for the payment of debts, legacies and expenses, the undevise<sup>d</sup> real estate shall be first sold, unless it shall appear from the will that a different arrangement of his assets for the payment of his debts or legacies was intended, in which case they shall be applied for that purpose in conformity with the provisions of the will.

Undevise<sup>d</sup> real estate to be sold first for payment of debts.

32. Where the executor or administrator shall have obtained a license for the sale of the real estate of the deceased, he shall give public notice of the time and place thereof by advertising the same in the *Royal Gazette* at Halifax, and in one newspaper if any published in the county, and by posting up notices thereof in the township or settlement wherein the lands lie, for thirty days previous thereto, and shall proceed to sell the same by public auction at the time and place named in the advertisement.

Notice of sale of real estate by license to be given.

33. Where the executor at the time appointed for the sale shall deem it for the interest of all persons concerned therein that the sale should be postponed, he may adjourn it for any time not exceeding thirty days, and shall give notice of such adjourned sale by posting up notices thereof.

Executor may adjourn sale, notice of adjournment.

34. The affidavit of the executor or administrator, made before a judge or registrar of probate, or justice of the peace, and filed in the registry within one year after the sale, shall be admitted as evidence of the time, place and manner of the advertisement and notices.

Affidavit of executor, evidence of sale.

35. All deeds of conveyance, mortgages or leases, made pursuant to the license, shall have the same effect as if made by the deceased.

Deeds, &c., as effectual as if made by deceased.

36. If the deceased at the time of his death were liable to perform any contract for the sale and conveyance of any real or personal estate, the judge shall have power to declare the administrator trustee thereof, so far as may

Administrator to convey lands when intestate has contracted for sale.

CHAP. 100. be necessary for performing such contract ; and thereupon such administrator shall have power to execute the necessary conveyances for the performance thereof, and shall hold the purchase money, subject to the same rules of descent and distribution, as if the conveyance had been made and the consideration received in the life time of the deceased.

Conveyance under Chapter.

37. Every conveyance made under the provisions of this Chapter, and registered in the county where the lands lie, shall be taken as presumptive evidence that all the proceedings on which the same is founded were rightly had.

Administrator *de bonis non* may execute conveyance agreed upon by deceased executor.

38. If any trustee or executor, empowered by any last will and testament to sell and convey lands of the testator, shall have made and entered into any contract for sale thereof, but shall have died before the full payment of the purchase money, and without having executed a conveyance, and there be no executor or administrator of such testator, the administrator *de bonis non* of the testator, may, upon receipt and payment of the purchase money, execute a conveyance of such lands to the purchaser, or any other person entitled thereto.

Administrator *de bonis non* may recover on judgment by deceased executor.

39. If such trustee or executor shall have brought an action on such contract or agreement against the purchaser, and obtained a judgment therein, the administrator *de bonis non* of the testator may take proceedings to recover the amount due on such judgment under the Rules of the Supreme Court, 1884, Order XL, and shall for that purpose be held to represent the said trustee or executor.

Judge may order division of real estate among persons by law entitled.

40. The judge of probate may order the real estate of the testator or intestate, wherever situate within the Province, to be divided among the persons by law entitled thereto, and if devised, according to the terms and conditions of the will, if terms and conditions be therein expressed ; if otherwise, then according to the provisions of this Chapter—as in cases of intestate property ; and whenever the share or interest of any such person so entitled shall have been transferred, the purchaser shall have the same rights and privileges, and be subject to the same liabilities, as the person whose share he represents.

When division among children cannot be made without prejudice, order, how made.

41. In cases where the estate is divisible among the children of a testator or intestate, and such division, or the division of any particular portion thereof, cannot be made without prejudice to the whole estate, he may order the whole, or after the division of the residue, the whole of such particular portion to the eldest son, and on his refusal to the other sons successively, and on their refusal, to the eldest and other daughters in like succession ; such son or daughter paying to the other children their shares of the

value of such estate, or giving satisfactory security for the payment thereof with six per cent. interest thereon. In case all the children refuse to accept such whole or portion, as the case may be, it shall be competent for the judge of probate to order a sale thereof. CHAP. 100.

42. Such order for division shall be made upon the application of a party interested; and guardians, when necessary, shall be appointed for such of the parties as shall be under age. Guardians appointed for minors.

43. Where there shall be a claim for dower, or the widow shall claim any individual share or right devised by will, the judge of probate shall have power to order the same to be assigned and set off. Assignment of dower to widow.

44. All divisions and valuations of real estate made under order of the judge of probate, shall be made by three disinterested freeholders to be appointed by the judge for that purpose, who shall before acting be sworn by the judge or registrar, or by a justice of the peace or commissioner of the Supreme Court, to the faithful discharge of their duty. Divisions and valuations of real estate to be made by three freeholders.

45. No such division or valuation shall be valid unless two at least of the persons so appointed and sworn shall concur, and the judge shall approve thereof. When valid.

46. Before such approval shall be given, the parties interested, or in case one or more of them are minors, the guardians, shall have eight days' notice of the time and place appointed to consider the same; and where any one or more of the parties interested shall be absent, or cannot be personally served, publication of such notice in the *Royal Gazette*, for at least four weeks before the day named, shall be considered sufficient service of notice. Notice before division, approved by judge.

47. The judge shall confirm or reject the division, or make such amendments thereof, as he may deem right, and shall tax and award the costs of such division and valuation, and apportion the same among the parties interested in the estate as he shall deem just; and such taxation and order shall have the same effect, and be enforced in the same manner as the taxation and order mentioned in the sixty-fourth section. Confirmation by judge, and costs.

48. Where such division is made the judge may if necessary order a surveyor to prepare a plan to be filed with the registrar. Plans may be ordered by judge

49. In cases where the estate of a testator or intestate is divisible amongst the next of kin, being collateral heirs, or the widow and such next of kin, and such division or the division of any particular portion thereof cannot be made without prejudice to the whole estate, the judge of probate When division among next of kin and widow cannot be made without prejudice, what orders may be made.

CHAP. 100. may order the whole, or after the division of the residue, the whole of a particular portion to the widow, if any, and if there be no widow, or if she shall refuse to accept the same, then to the eldest of the heirs that may be in the Province, and on his refusal, to the other heirs so being in the Province, successively, in the order of their ages, such heir paying to the other heirs their shares of the value of such estate, or giving satisfactory security for the payment thereof, with six per cent. interest thereon. And in case all the heirs refuse to accept such whole or portion, as the case may be, it shall be competent for the judge of probate to order a sale thereof, in such mode as he shall direct.

Order, how  
made.

50. Such order shall be made, and guardians appointed, and other proceedings had, as prescribed by the forty-second section. The relative ages of the heirs shall be ascertained by the affidavit of the applicant as to the facts, according to his belief.

Certified copy of  
will to be re-  
corded.

51. It shall be the duty of the registrar of probate, so soon as an original will shall be duly filed and admitted to probate, or so soon as letters of administration with the will annexed shall be granted, to make an exact and literal copy thereof, which he shall duly certify under his hand and deposit with the registrar of deeds for the county or counties, district or districts, wherein testator's lands are situate, so far as the same may be known to be recorded, and it shall be the duty of the registrar of deeds to record the same, without further or other proof in the books of registry for such counties or districts, and the expense of doing so shall be paid out of the estate, and the registrar of probate shall include the same in his fees on probate or administration being granted; but the non-performance of the duty hereby imposed shall not defeat any title. The registrar of probate and registrar of deeds shall each receive a fee of one dollar for each copy of the will, and for recording the same.

Certified copy of  
division, &c., to  
be recorded.

52. In cases of intestacy, and in cases when a division of real estate is made under the terms of a will, and after the division and valuation shall have been confirmed by the judge of probate, it shall be the duty of the registrar of probate to deposit with the registrar of deeds for the county or counties, district or districts, where deceased's lands are situate, a copy of such division and valuation, with the plans and description of the same, duly certified under his hand, and it shall be the duty of such registrar of deeds to record the same, and the expense of doing so shall be a charge against the estate, to be taxed for and collected by the registrar of probate. The non-performance of the duty hereby imposed shall not operate to defeat any

title under any such division. The costs to be paid under this section shall be ten cents per folio for the decree, and one dollar for each copy of plan, to be paid to the registrars of deeds and probate respectively.

CHAP. 100.  
Costs.

53. An executor or administrator, at any time after the lapse of twelve months from the grant of probate or letters of administration, may file an affidavit in the registry of the court, with a schedule of doubtful and desperate debts attached, containing the particulars of dates, names, and amounts, setting forth therein that such debts are as he believes doubtful and desperate, and that he has been unable to collect the same; and thereupon the judge of probate, on the application of the executor or administrator, or any person interested in the estate, on its being shewn to his satisfaction that it will be for the benefit of the estate, may make an order for the equitable division of the same amongst the creditors, next of kin, or other parties entitled, or may appoint auditors for that purpose, whose judgment shall be subject to confirmation by the court; and on the division which may be ordered by the court, the parties to whom the debts are allotted shall have all the rights and remedies for the recovery in their own names of the debts assigned, which such executors or administrators possessed, or may make an order directing the sale of such debts or any of them, either separately or *en bloc*, at public auction, after duly advertizing the same for the period of one month, giving full particulars as aforesaid, in the county where deceased resided, and the purchaser or purchasers thereof shall have all the rights and remedies for the recovery in their own names of the debts so purchased, which the deceased in his lifetime, or such executor or administrator possessed or had.

Doubtful and desperate debts.

54. When the executor or administrator shall be a creditor of the estate he shall file in the office of the registrar at least one month before the distribution of the estate a true and correct account of all dealings between the deceased and himself, verified by affidavit in the form in the annexed schedule.

Executor when creditor, &c., to file account before distribution.

55. The naming of any person executor in a will shall not operate as a discharge of any claim which the testator had against him; but such claim shall be included as part of the estate of the deceased in the inventory, and such executor shall be liable for the same as for so much money assets of the estate in his hands at the time when such debt or demand shall be due, and shall apply and distribute the same as part of the personal estate of the testator.

Naming debtor executor shall not extinguish debt.

## CHAP. 100.

Estate, how de-  
clared insolvent.  
Insolvency, how  
pleaded.

56. Any executor or administrator may make oath before the judge of probate who has granted him administration of the estate that he believes the same to be insolvent; and the judge may if he shall think fit, by an order for that purpose, declare the estate insolvent; and the executor or administrator may plead such order in bar of any legal proceedings instituted against such executor or administrator for any cause of action accruing against the deceased. In such case the court or a judge may from time to time make such order for a stay of proceedings, or such other order or orders as justice may require, the costs to be in the discretion of the court or a judge.

Proceedings  
when executor  
or administrator  
required to ren-  
der an account.

57. Upon being required by the judge of probate on the petition of any creditor or other person interested in any estate to render an account or settle the estate, the executor or administrator may apply to the judge for a citation requiring the creditors and next of kin of the deceased and the legatees if any to appear before him on a day therein to be specified, and to attend the settlement of such account, the adjustment of the claims of creditors and all parties interested, and the settlement of the estate; and where the judge shall decide against any creditor or other person interested in respect of any controverted claim, such creditor or other person may appeal to the Supreme Court in like manner as is provided in this Chapter in respect to appeals. In the final settlement of an estate, personal service of citations on the creditors and other parties interested shall be no longer necessary, but it shall be sufficient for the executor or administrator to send a registered letter to the address of all interested in the estate and of all creditors residing within the Province who have rendered to him duly attested accounts and which have not been paid, such letters to contain a copy of the citation. Provided the said letter shall be mailed to the address of said parties interested and creditors at least thirty days before the day fixed for the settlement of said estate. And in case the residence or address of any such interested parties or creditors may be unknown, or if they or any of them reside out of the Province, then a true copy of such citation shall be published in the *Royal Gazette* at least thirty days previous to the day on which such final settlement is to take place.

Citations on final  
settlement, how  
served.

Citations on final  
settlement, to  
whom directed.

58. It shall not be necessary to serve any citation preparatory to the final settlement of an estate upon any creditor whose debt shall have been paid, nor upon any legatee or next of kin; unless the judge of probate shall order such service, and shall in such order name the parties to be so cited.

59. Any literate person may serve such citation, and CHAP. 100.  
 an affidavit in writing of the service having been regularly Who may serve  
 citation; service,  
 how verified; ex-  
 pense, how borne  
 made by the person serving the same, taken before the  
 judge or registrar or any justice of the peace, and filed in  
 the registrar's office, and specifying the time and place of  
 service, shall be sufficient; the expense of which service  
 shall be borne by the party at whose instance the same was  
 granted, or paid out of the estate or otherwise, as the  
 judge may direct.

60. Any person interested in the estate of the deceased All persons inter-  
 ested may  
 contest settle-  
 ment.  
 may attend the settlement of such account and contest  
 the same, and any account against the estate, if not  
 previously paid; and may obtain from the judge process  
 to compel the attendance of witnesses.

61. On making his account, every executor or adminis- Executors, &c., to  
 produce vouch-  
 ers, may be ex-  
 amined on oath.  
 trator shall produce vouchers for all debts and legacies  
 paid, and for all funeral charges and expenses; and such  
 executor or administrator may be examined upon oath by  
 a master under an order of the court or by the judge of  
 probate, touching any property or effects of the deceased  
 which have come to his hands or knowledge, and the  
 disposition thereof, and such executor or administrator Sums under  
 eight dollars,  
 how vouched.  
 may be allowed any item of expenditure not exceeding  
 eight dollars, for which no voucher is produced, if such  
 expenditure be supported by his own oath positively to  
 the fact of payment, specifying when and to whom the  
 same was paid, and such oath being uncontradicted.

62. Any hearing may be adjourned from time to time Hearings ad-  
 journed, audi-  
 tors appointed.  
 as shall be necessary; and the judge may appoint one or  
 more auditors to examine the accounts before him and to  
 make report thereon under oath, subject to his confirma-  
 tion, and may make a reasonable allowance to such auditors,  
 to be paid out of the estate.

63. The final settlement of the account and the allow- Final settlement  
 and allowance of  
 accounts, of what  
 facts conclusive  
 evidence.  
 ance thereof by the judge, or upon appeal, shall be  
 conclusive evidence against all creditors, legatees, next of  
 kin of the deceased, and all persons in any way interested  
 in the estate upon whom the citation shall have been served,  
 either personally or by publication as herein directed, of  
 the following facts:—

*First.*—That the charges made in such account for  
 moneys paid to creditors, to legatees, to the next of kin,  
 and for necessary expenses, are correct.

*Second.*—That such executor or administrator has been  
 charged all the interest for moneys received by him and  
 embraced in his account, for which he was legally  
 accountable.



CHAP. 100. *Third.*—That the moneys stated in such account as collected were all that were collectable on the debts stated in such accounts at the time of the settlement thereof.

Costs, how allowed, taxed and recovered.

64. The judge shall tax and award such costs as are allowed by law, to be paid by the party against whom the decision may be made in any matter contested before the court, and if against the executor or administrator to be paid out of his own estate or out of the estate of the deceased as may be just and proper, which taxation and order shall have the like effect as a judgment in a court of record, and execution may be issued by the registrar of probate in the form in the schedule. Any such taxation or order may be reviewed by the Supreme Court or by any judge at chambers, upon notice given to the party in whose favor the taxation and order may be made, without any appeal being entered and perfected, and such order made therein as to such court or judge shall seem just and proper. And execution may issue upon a decree of a judge of probate for the amount awarded therein with or without costs as the judge may order; and such execution shall be as nearly as possible in the form prescribed in the schedule to this Chapter.

Review of taxation.

Execution may issue on decree.

Executor, &c., after eighteen months to pay debts and make distribution.

65. Every executor or administrator, at the expiration of eighteen months from the date of the letters testamentary or letters of administration, advertisement having been made as hereinbefore prescribed, shall pay all such legal and just claims as shall then be exhibited, so far as the estate of the deceased in his hands will enable him; and shall make such distribution of the surplus as directed by the will of the deceased or by this Chapter.

Executor or administrator may be cited to account.

66. The judge of probate on the application, after eighteen months from the date of the letters of administration or probate, of any party interested as a creditor, legatee, or next of kin, or as surety on the administration bond, may cite the executor or administrator to render an account, and to proceed to have the same settled according to law; and on the settlement of any administrator's or executor's account the judge of probate may proceed to adjust the claims of creditors, subject to appeal as in other cases. The costs of the proceedings on citation to render an account shall not be allowed against the executor or administrator, unless the party at whose instance such proceedings shall have been had shall first have given ten days' notice to such executor or administrator, requiring him to render such account.

Executor or administrator may cite co-executor or co-administrator to account.

67. After eighteen months from the date of letters of administration any executor or administrator may cite a co-administrator or co-executor to account before the judge;

and thereupon the judge may compel the party cited to proceed to the settlement of his account as between him and the party at whose instance he was cited, or may order all the administrators or executors to proceed to the settlement of their accounts as prescribed in the fifty-seventh section. CHAP. 100.

68. In the settlement of the accounts of executors or administrators, or in any matter pertaining thereto, the Court of Probate shall have the same power which was enjoyed by the Court of Chancery. In settlement of accounts Court to have power of Chancery Court.

69. In the settlement of any estate the executors or administrators may be allowed over and above all such actual and necessary expenses as may appear just and reasonable, a commission not exceeding five per cent. on the amount received by them; and the court further may apportion such commission among the executors or administrators of any estate as may appear just and proper, according to the labor bestowed or responsibility incurred by them respectively. Commissions to executors, &c., how adjusted.

70. The judge of probate may order the surplus assets remaining after the settlement of an executor's or administrator's account to be distributed among the parties entitled thereto. Distribution of surplus assets.

71. In the settlement and distribution of the insolvent estate of any deceased person the whole of the real and personal estate remaining after payment of the funeral charges, the necessary medical and other attendance on him during his last illness, and the expenses attendant on the settlement of the estate, shall be distributed among those creditors who shall have rendered their accounts duly attested within the period before prescribed, in the following manner:— Order of distribution of insolvent estate.

*First.*—Clerks, domestic and farm servants, and rent, to be paid in full for the last year previous to the death, when not more than a year's wages or rent is due; the excess to be on the same footing as other claims.

*Secondly.*—All other creditors to be paid in proportion to the amount of their respective debts.

72. Nothing in the preceding section contained shall affect debts due on mortgages of real or personal estate, or on judgments registered in the lifetime of the deceased person, so far as the value of the property so mortgaged or lands bound by such judgment shall extend and no more, leaving the mortgagee or judgment creditor at liberty to claim as any other creditor for any balance that may remain due to him after the value of such property or lands shall have been realized; or as affecting the widow's dower in real estate, or to prevent any creditor who may Mortgages, judgments, &c., when not affected by last section.

CHAP. 100. not have exhibited his attested account as before prescribed, from recovering his demands against the estate of any deceased person to such amount as may remain in the hands of the executor or administrator for distribution after the settlement of the estate; nor to affect mortgages duly executed and recorded, and judgments docketed and duly recorded before the nineteenth day of March, one thousand eight hundred and forty-two.

Judge or registrar not to be counsel, &c.

73. No judge or registrar or business or professional partner of any judge or registrar shall be directly or indirectly employed or professionally concerned as counsel, attorney, solicitor, proctor, or advocate, for any party in any matter pending or to be brought before the court of which he is judge or registrar, under a penalty of five hundred dollars for each offence.

Registrar to have charge of books, &c.

74. The registrar shall have the care and custody of all papers and books belonging to the Probate Court; and in case of the death, sickness or necessary absence of the registrar, the judge may appoint and swear into office some fit person to officiate in his stead until the registrar shall be able to attend to his duty, or until a new one be duly appointed.

Registrar *pro tem*, how appointed.

Books to be kept by registrar.

75. The registrar shall keep a book for the registration of wills, a book for the registration of decrees and orders of sale of real estate, and a book of acts or a book containing a short abstract of the proceedings of the court, properly indexed.

Wills, how registered.

76. In the book for the registration of wills, all original wills are to be registered, and all interlineations, alterations or apparent erasures not noticed in the attestation, are to be noted at the foot of the record, so as to be as nearly as possible an exact and literal transcript of the original.

Decrees filed and registered.  
Letters of guardianship, &c., registered.

77. All decrees are to be regularly filed and registered.

Appeals to Supreme Court.

78. All letters of guardianship, and letters *ad colligendum* are to be registered.

Time and manner of appeal.

79. Any person may appeal from any order, sentence, decree, or denial of the judge of probate, directly to the Supreme Court in Halifax, which court shall have power to confirm, alter or reverse the same; and the appellant shall within thirty days from the making of such order, sentence, decree or denial, enter his appeal, and file in the registry of the Court of Probate a statement of the grounds on which the appeal is sought; and also, within ten days thereafter, shall file a bond to the judge, with two sureties to be approved by him, in the penal sum of two hundred and forty dollars, conditioned for the payment of such costs as may be awarded against him upon such appeal

Bond, when filed.

and such appeal, when so perfected, shall be a stay of CHAP. 100. proceedings.

80. In cases of appeal to the Supreme Court, such court or any judge thereof at chambers may order the judge of probate to transmit to the court in which the appeal is to be heard and determined, all such original papers, documents and testimony filed in the Probate Court, excepting wills, as may be required for the purposes of the appeal, which original papers shall be certified under the hand of the judge or registrar of probate, and also a copy or copies of any original will or wills, upon being paid the usual fees for copying and certifying the same.

In case of appeal Supreme Court or judge may order transmission of papers from Probate Court.

81. In case it shall appear that the ends of justice will be promoted thereby, the appeal court may remit the cause to the Probate Court for a further investigation of facts or more perfect consideration, with such instructions and upon such terms as may be deemed advisable.

Cause, when remitted.

82. The judge of probate shall have power upon application made to him therefor, supported by affidavit, to amend his report of evidence taken in any matter heard or adjudicated before him.

Judge may amend his report of evidence.

83. If upon the appeal having been perfected, and the fees allowed in the eightieth section tendered, the judge of probate shall neglect to transmit the appeal and papers connected therewith to the court wherein the appeal is to be heard and determined; on due proof thereof the court may proceed to enforce the return by attachment as for a contempt.

Judge neglecting to transmit appeal, papers may be attached by court of appeal.

84. The Supreme Court or any judge at chambers, upon special cause shewn at any time within six months after the time limited for entering and perfecting an appeal, may allow an appeal upon such terms as may seem just, in which case the same proceedings shall be had as if the appeal had been originally entered in the Court of Probate.

Appeal allowed within six months on special cause shown.

85. The court in which the appeal is heard may direct the costs thereof to be paid personally by the parties against whom such costs shall be awarded, or out of the estate which may be the subject of appeal. The payment of the costs may be enforced against the appellant by execution or suit on the bond, and against other parties by execution; but no such suit on the bond shall be commenced without the order of the court of appeal or a judge thereof.

Costs allowed by court of appeal.

Payment of, how enforced.

86. The court of appeal when any matter of fact shall arise, may if they think fit order a feigned issue to be made up, and prescribe the manner of making the same, and direct the county in which the same shall be tried, and shall have power to grant new trials thereof, and to order by whom and in what manner the costs attending the

Bond, how sued on.

Feigned issues, ordered.

**CHAP. 100.** determination of the issue shall be paid: the final determination of such issue shall be conclusive as to the facts therein controverted.

Forfeiture for executor's neglect to prove will.

87. Any executor, knowing of his being named as such, and neglecting without sufficient reason to cause the will to be proved and recorded in the Probate Court of the proper county, or to present such will and declare his refusal of the executorship, shall forfeit after the lapse of the first month twenty dollars for every month he shall neglect his duty therein, which may be recovered to his own use by any person having an interest in the estate of the deceased in an action as for a private debt.

Administration with will annexed, when executor refuses to act.

88. Upon the refusal of the executor to accept the trust, the judge of probate shall commit administration of the estate, with the will annexed, to those who would have been entitled to the administration thereof if the deceased had died intestate.

Executor ordered to give bonds upon complaint of waste.

89. The Supreme Court or Court of Probate may, if they shall think fit, upon summary application, and upon due proof that the executor is wasting the estate, order the executor to give security for the performance of his duty, and if he shall not obey such order shall cancel his authority; and the Court of Probate shall thereupon appoint another executor, who shall have full authority to proceed with the settlement of the estate.

Judge empowered to issue compulsory process, and punish for contempt.

90. The judge of probate shall have power to issue such process as may be necessary for the discharge of the trust reposed in him, and also to issue subpoenas to compel the attendance of witnesses and the production of papers material to any inquiry pending before him. The party refusing or neglecting to obey such process, or any order or decree of a judge of probate, may be punished as in the Supreme Court for a contempt; and all such process shall be executed by the officer to whom it is directed.

Process, how arrested.

91. All compulsory process shall be directed to the sheriff or his deputy, or to a coroner.

Letters *ad colligendum*, how granted.

92. No letters *ad colligendum* shall be granted by the judge without due security being first taken.

Wills when and how taken from office.

93. No judge of probate shall permit an original will to be in any case taken out of the Province, or to be removed from the office but for the purpose of being produced in the Supreme Court, and then only on security being taken for its safe custody and return.

Parties may file papers and advocate their own causes.

94. It shall not be necessary in any case for a party to employ a proctor or advocate in the Court of Probate, but every party may prepare and file his own papers and advocate his own cause therein.

95. The value of an estate in reference to the fees CHAP. 100. payable thereon, shall be ascertained in the first instance by the oath of the administrator or executor to his belief of the value thereof, to be regulated, however, eventually by the actual amount. Value of estate as to fees, how estimated in first instance.

96. When the authority of an executor or administrator shall cease he may be cited to account before a judge of probate, at the instance of the person succeeding to the administration of the estate. Previous executor cited by successor to account.

97. The judge of probate may on summary application, if he shall think it for the interest of the estate so to do, order any money in the hands of the executor or administrator to be paid into any chartered bank in this Province to the credit of the estate; and when money shall be so paid the bank shall not permit the same to be withdrawn without the order of the Court of Probate. Judge may order money to be paid by executor into bank.

98. When any provision shall be made by any will for specific compensation to an executor, the same shall be deemed a full satisfaction for his services in lieu of any commission or his share thereof, unless such executor, by declaration under his hand, filed in the Court of Probate, shall renounce all claim to such specific legacy. Specific compensation in lieu of commission.

99. Where any oath prescribed by this Chapter is required to be taken before a judge or registrar, and the party to make such oath lives out of the Province or more than thirty miles distant, or by reason of age or sickness is unable to appear before such judge or registrar, the oath of such party taken in writing before any person duly authorized by such judge, shall have the same effect as if taken before the judge or registrar. A judge may authorize a person to administer oath in certain cases.

100. The forms in the annexed schedule shall be observed, as nearly as may be, in the Court of Probate.

101. Fire proof safes shall be provided in the several counties and districts for the preservation of the records, books and papers of the registry. Fire proof safes to be provided.

102. The municipal council shall provide for the custody and safe keeping of the books of registry, and see that they, with the indexes, are placed and kept in good and efficient condition; and shall assess upon the county, with the county rates, such sums as may be necessary from time to time in the premises; and in case the municipal council refuse or neglect, the Supreme Court shall amerce the county in such sum as shall appear to it upon the affidavit of a ratepayer to be necessary for the purpose of this section, which sum shall be assessed upon the inhabitants, collected and paid to the treasurer, and accounted for as other rates. Provisions for safe keeping, &c., of books of registry.

## CHAP. 100.

## PROOF OF WILL IN SOLEMN FORM.

How will proved  
in solemn form.

103. Any executor or person having or desiring execution or probate of a will, may have the same proved in solemn form at any time. The manner of such proof in solemn form shall be as follows :—

The executor or person having or desiring execution or probate of the will of the deceased, shall present a petition to the judge of probate, which petition shall be as nearly as may be in the form now used upon application for probate of a will, and shall be verified by affidavit ; but the petition shall, in addition to the other matter usually contained in such a petition, contain (as far as the petitioner can ascertain the same) the names, ages, occupations, and places of residence of the heirs, devisees, legatees, and next of kin of the deceased. Upon the petition being filed with the registrar, a citation shall issue, which citation shall be as nearly as may be in the form of the schedule to this Chapter, but the names of all the heirs, devisees, legatees and next of kin aforesaid shall be set forth in such citation. In all cases where such heirs, devisees, legatees, and next of kin reside in this Province, such citation shall be published in the *Royal Gazette*, and shall also be served personally upon them. Such citation shall be made returnable within at least two months from the time of issuing the same ; shall be so published in the *Royal Gazette* for eight weeks, and shall be so served for at least thirty days before the return thereof. In case any of such heirs, devisees, legatees, or next of kin shall reside out of the Province, then such citation shall be made returnable after such length of time, and shall be published and served so long, before the return thereof as to the judge may seem right, having regard to the distance from the Province at which such heirs, devisees, legatees, and next of kin, or any of them may live. If it shall be made to appear to the judge that personal service of the citation cannot be made upon any such heir, devisee, legatee, or next of kin, so being or residing out of the Province, then he shall make an order for the publication of the citation for a period of three months in the *Royal Gazette*, and in some other newspaper to be named by the judge, and the same shall be so published, and such publication shall have the like effect as to such heir, devisee, legatee, or next of kin, so residing or being out of the Province, as if such citation had been personally served upon him. Upon due proof of such publication and service, or publication alone, the judge shall hear the matter of such petition and decide the same according to the evidence, and the usual practice of

the Probate Courts. The decision of the judge may be CHAP. 100.  
 appealed from, as in other cases, and the Supreme Court  
 shall have the like power to direct an issue, as provided in  
 this Chapter.

104. Any heir, devisee, legatee, or other person interested in a will may, whether application to prove the same in common form has or has not been made or refused, compel proof thereof in solemn form, by serving on the executor or person having the execution or probate of such will or praying therefor, a citation to prove such will in solemn form, whereupon such executor or person shall, within twenty days after such service, present a petition to the judge of probate, such as is provided for by the next preceding section, and the subsequent proceedings shall be the same as in the case where the executor or person having or desiring execution or probate of a will undertakes to prove the same in solemn form. Proof may be compelled.

105. It shall not be necessary in any case to prove a will in any but the simple or common form, unless the executor or person having or desiring execution or probate, or the heir, devisee, legatee, next of kin, or other person interested, shall deem it necessary to do so. And any will proved in simple or common form, and the probate thereof, shall be to all intents and purposes deemed valid proof thereof, unless proof in solemn form shall be deemed necessary and required as aforesaid. Proof in common form, when sufficient.

106. Whenever it shall be made to appear by the affidavits of two credible persons, on an application to the judge of the Probate Court for the county in which the estate is being administered, that any party or parties who if living would be entitled to any moneys or lands of the estate of any deceased person, have or has been absent from and out of the Province of Nova Scotia, and have or has not been heard of or from for a period of ten years and upwards next preceding such application, and that the said party or parties are believed to be dead, it shall and may be lawful for said judge of probate to order the executor or administrator of such deceased person's estate to distribute such moneys or lands among, and hand the same over to, such person or persons as would in the event of the death of the said absent party or parties having taken place immediately preceding the time at which such application is made be legally entitled thereto. Provided that before such moneys or lands shall be distributed or handed over as aforesaid a bond or bonds to be approved of by the judge of probate in double the amount of the sum of money, or double the value of the lands to be distributed, apportioned or handed over, shall be filed in Provisions for distribution in case party absent from Province and unheard of for ten years.



CHAP. 100. the Probate Court for said county, and shall be conditioned for the payment or redelivery of the said moneys or lands to the said absent party or parties should he or they return, or in case of his or their death being proved to have taken place at a time other than that immediately preceding said application, then to the person or persons entitled to the same by reason of said death having taken place at such other time; and nothing herein contained shall limit or abridge the legal remedies which the said absent party or parties, or any other persons entitled thereto, may resort to for recovering said moneys or lands of or from the party or parties to whom said executor or administrator may have paid or delivered the same; but the executor or administrator making such payment or distribution shall be relieved from all further liability in respect thereof.

Service in cases  
not otherwise  
provided for.

107. In cases where personal service cannot be made on an executor, administrator, or other party interested in an estate, of any citation order or other paper, owing to absence from the Province, it shall be lawful for the judge of probate, unless otherwise provided in this Chapter, on being satisfied by affidavit of such fact, to make an order for publication of such citation order or other paper, for such time and in such manner as he shall deem necessary; which publication shall be held to be a sufficient service in such matter or proceeding.

Not to conflict  
with Dominion  
Legislation.

108. Nothing in this Chapter shall be construed to contravene or conflict with any enactment of the Parliament of Canada on the subject of insolvency or otherwise.

#### SCHEDULE.

*Form of affidavit to be annexed to any account or claim rendered by a creditor to an executor or administrator.*

A. B., of ———, maketh oath and saith, that the foregoing paper writing doth contain a true and correct account of his demand against the estate of ———, deceased, and that all the credits to which the deceased was honestly and justly entitled, so far as deponent believes, have been given on said account; and that the balance of ——— is justly and truly owing to deponent.

Sworn before me at ———, this }  
——— day of ———, A. D. 18—.

A. B.

*Citation.*

CHAP. 100.

Nova Scotia. County of \_\_\_\_\_, SS.

To A. B., of \_\_\_\_\_, in the County of \_\_\_\_\_,

Greeting :

Whereas A. B., executor, (*or, administrator, or, other person interested, as the case may be,*) hath prayed that you may appear and (*here state in short form the object,*) you are therefore required to appear before me at a Court of Probate, to be held at \_\_\_\_\_, within and for the said County, on the \_\_\_\_\_ day of \_\_\_\_\_ next, to (*here state in short form the object.*)

Given under my hand and the seal of the said Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

C. D., Judge of Probate.

E. F., Registrar of Probate.

*Attachment.*

Probate Court.

County of \_\_\_\_\_, SS.

To the Sheriff of \_\_\_\_\_.

Greeting :

You are hereby required to attach \_\_\_\_\_ by his body, if found within your bailiwick, and him safely keep, so that you may have his body before me at my office in \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_ next coming, to answer concerning a contempt lately by him committed in neglecting to appear before me pursuant to a subpoena issued in that behalf, (*or, in case it may be for refusing to testify after appearing, for refusing to testify before me,*) in a certain matter lately pending before me as a Judge of Probate for said County, and have then there this writ.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

C. D., Judge of Probate.

E. F., Registrar.

*Execution.*

Probate Court.

County of \_\_\_\_\_, SS.

To the Sheriff of the said County of \_\_\_\_\_.

Greeting :

You are hereby required (*or, in case it be an alias execution, as before,*) to levy of the goods and chattels of \_\_\_\_\_, within your bailiwick, the sum of \_\_\_\_\_, for costs

CHAP. 100. awarded in favor of (*or as the case may be*) ———, in a certain proceeding lately had before me as Judge of Probate in and for the said County, and have that money before me at my office in ———, within thirty days from the date hereof, to be rendered to the said ———, and for want of such goods and chattels whereon to levy you will take the body of the said ———, and him safely keep until the said sumand your costs of levying this execution be paid, and make return thereof within thirty days from the date hereof.

Given under my hand this — day of ———, 18—.

C. D., Judge of Probate.

E. F., Registrar.

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*Warrant of Appraisement.*

Nova Scotia. County of ———, SS.

To A. B., &c.

Greeting :

You are hereby appointed and empowered to take an inventory of all the real estate, goods, chattels and credits, of which ———, late of ———, in the County aforesaid, died, seized, or possessed within the Province, and according to your best skill and judgment truly to appraise the same, which, when completed, you are to deliver to the executor or administrator of the said deceased, to be returned together with this warrant in three months from the date hereof.

Given under my hand this — day of ———, 18—.

C. D., Judge of Probate.

E. F., Registrar.

SS.

The above named appraisers personally appeared before me, and made oath that they would faithfully and impartially perform the services to which they are appointed by the above warrant.

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*Bond on Appeal.*

(*The bond to be taken for ——— dollars, payable to the Judge of Probate in the same manner as administration bonds, and conditioned as follows :*)

Whereas the above bounden ——— hath appealed from the decision of the Judge of Probate, made in a certain matter now pending before the said Judge: Now the

condition of this obligation is such that if the said ——— CHAP. 100.  
 shall well and truly pay such costs arising from such  
 appeal, and to such person as the court of appeal may  
 order and direct, then this obligation to be void, otherwise  
 to remain in full force.

Signed, sealed and delivered }  
 in the presence of ———. }

—————

*Administration Bond.*

Know all men by these presents that we, A. B., C. D.,  
 and E. F., all of ———, in the County of ———, are held  
 and firmly bound unto ———, Judge of Probate for the  
 County of ———, in the sum of ———, to be paid to him  
 or his successors in office, for which payment we bind  
 ourselves, our and every of our heirs, executors and  
 administrators, jointly and severally by these presents,  
 sealed with our seals, and dated this ——— day of ———,  
 18—.

The condition of this obligation is such that if the  
 above bounden A. B., administrator of the goods and  
 effects of ———, deceased, do make a true inventory of  
 the goods and effects of the deceased which have or shall  
 come to the possession or knowledge of the said A. B.,  
 and the same do exhibit into the Registry of the Court of  
 Probate for the County of ———, on or before the ———  
 day of ——— next ensuing; and the same goods and  
 effects, and all other the goods and effects of the deceased,  
 at the time of his death or which at any time after shall  
 come to the possession or knowledge of the said A. B., do  
 administer according to law, and further do make a true  
 account of his administration on or before the ——— day  
 of ———, in the year of our Lord one thousand eight  
 hundred and ———; and all the residue of the said goods  
 and effects which shall be found remaining upon the said  
 administrator's account, the same being first examined and  
 allowed by the Judge of the said Court, shall deliver and  
 pay unto such persons respectively as the Judge by his  
 decree shall appoint; and if the said A. B., Administrator,  
 shall perform all orders and decrees made by the Court,  
 touching the goods and effects of the deceased, and if it  
 shall hereafter appear that any last Will was made by the  
 deceased, and the same be proved and allowed by the  
 Court, then if the above bounden A. B., being thereunto

CHAP. 101. required, do deliver the said letters of administration to the said Judge, or his successor in office, then this obligation to be void.

Signed, sealed and delivered }  
in the presence of ———. }

*Bond on Sale of Real Estate.*

Know all men by these presents that we (*as in administration bond.*)

Whereas license has been granted by the above named Judge of Probate to the above bounden Executor of the last Will and Testament (*or, administrator of all and singular the goods, chattels, credits and estate, as the case may be,*) of ———, deceased, to sell (*or, lease or mortgage, as the case may be,*) the real estate of the said deceased for payment of his debts and legacies: Now the condition of this obligation is such, that if the said A. B., executor, (*or, administrator*) as aforesaid, shall faithfully apply all moneys arising from the sale (*lease or mortgage*) of any of the real estate of the said deceased, or otherwise from the rents and profits thereof, in payment of the debts or legacies of the deceased, agreeably to law, and shall truly account for the same in his administration account before the Court of Probate for the County of ———, or other court of competent authority in that behalf; and shall pay any surplus moneys which may be found remaining in his hands upon such accounting unto such person as the Court of Probate for the said County of ———, or other court of competent authority in that behalf shall by decree appoint, then this obligation to be void.

Signed, sealed and delivered }  
in the presence of ———. }

CHAPTER 101.

OF JUSTICES OF THE PEACE: THEIR APPOINTMENT AND PRIVILEGES.

Appointment of justices.

1. It shall be lawful for the Lieutenant-Governor, by and with the advice of the Executive Council, at any time or times to appoint under the Great Seal of this Province or the Seal-at-arms, such and so many justices of the peace in and for the several and respective counties of this Province as may be deemed expedient and proper.

2. In any commission or commissions to be issued, it shall be lawful to include the name of one or more person or persons, or to issue a separate commission to each person to be appointed. CHAP. 101.  
Commission may include several names.

3. Each person to be appointed shall before entering on the duties of his office be duly sworn before the municipality clerk for the county for which he shall be appointed, and if there shall be more than one municipality district in such county then before the clerk of the municipality in which the person so appointed resides, and each municipality clerk shall keep a record or minute of such person being duly sworn, in which shall be stated the date of such person being duly sworn. An examined copy of such record or minute, or a copy certified under the hand of such municipality clerk, or his deputy, shall be evidence of such person having been duly appointed and sworn, in all courts of law and equity. Oath of office, before whom sworn.

4. Each person on being so appointed and duly sworn, shall be invested with all the rights, powers, privileges, immunities and advantages heretofore had, held, exercised and enjoyed by any justice of the peace as heretofore appointed in this Province, and shall be entitled to the rights, privileges, immunities and advantages heretofore given, granted and extended to any justice of the peace, as well by statute and Act of the General Assembly as otherwise. Powers and privileges.

5. Nothing in this Chapter shall affect or interfere with any commission of the peace heretofore issued, or with the rights, privileges, immunities and advantages given, granted and bestowed under and by virtue of such commission, or by any Act or Acts of the General Assembly or otherwise, and all such rights, privileges, immunities and advantages shall exist and continue in as full force and effect as if this Chapter had not been enacted, except as herein is provided. Existing commissions not affected.

6. The Lieutenant-Governor-in-Council is authorized to displace and remove any person or persons from the office of justice of the peace, as well those appointed previous to the passing of this Chapter as those hereafter appointed; and in the event of any person or persons being removed or displaced, notice thereof shall be given in the *Royal Gazette* of this Province, and the *Royal Gazette* containing such notice shall, in all courts of law and equity, be evidence of such displacing or removal. Removal from office.

7. All and every appointment of any person or persons to the office of justice of the peace, made since the first day of July in the year of our Lord one thousand eight hundred and sixty-seven, shall be deemed and taken to be a good Appointments since July, 1867, legalized.

CHAP. 101. and valid appointment, and every person so appointed shall be entitled to and be invested with all the rights, powers, privileges, immunities and advantages heretofore given and granted to, and held, exercised and enjoyed by, justices of the peace as well under and by virtue of the commission of the peace as by any Act or Acts of the General Assembly or otherwise, and shall be subject to all the provisions of this Chapter in the same manner as if such person or persons had been appointed after the passing of this Chapter; and all and every act and acts, matter or thing heretofore done and performed by any such person or persons in his or their capacity of a justice of the peace, shall be deemed and taken to be as good, valid and legal as if this Chapter had been passed and in force previous to such person or persons having been appointed.

When roll lost, &c., justices may be ordered to produce their commissions.

8. When it is brought to the notice of the Governor-in-Council by the warden of any county or district, that a roll of the justices of the peace cannot be made out for such county or district, on account of the loss of the roll or from other sufficient cause, the Governor-in-Council shall, by notice in the *Royal Gazette*, call upon the justices of the peace in such county or district to produce their commissions and qualifications to the clerk of the municipality for such county or district, at a date to be fixed by the Governor-in-Council. A notice shall also be posted in each polling district in such county or district by the clerk of the municipality; and the clerk shall enter the names of such justices, with the dates of their commissions and qualifications; and the names on such roll shall constitute the list of justices of the peace for such county or district.

Parchment rolls furnished by Government.

9. It shall be the duty of the Governor-in-Council to furnish parchment rolls to the clerk for such county or district where such rolls have become lost or for other sufficient cause; and the clerk for such county or district shall cause the names of the justices of the peace for such county or district to be entered on such parchment rolls as in the eighth section provided.

Clerk's fee.

10. The clerk of the municipality shall be entitled to receive a fee of twenty-five cents from each justice of the peace for such services.

When commission lost, &c., justice may file affidavit of the fact.

11. When a justice of the peace called upon to produce his commission or qualification, under the provisions of the eighth section, shall not be able to produce his commission by reason of the same being lost or mislaid, his name shall be entered on the roll on his making and filing with the clerk of the municipality an affidavit in the form and to the effect of that in schedule A; and such affidavit shall be sworn before any justice of the peace.

12. Every action against a justice of the peace or stipendiary magistrate for any act done in the execution of his office with respect to a matter within his jurisdiction shall be an action on the case, and it shall be expressly alleged in the declaration that the act was done maliciously and without reasonable and probable cause; and if upon the trial the plaintiff fail to prove such allegation, judgment shall be given for the defendant.

CHAP. 101.

Actions against justices.

13. If the action be brought for an act done in a matter where he has no jurisdiction, or where he has exceeded his jurisdiction, the party injured thereby or by any act done under a conviction, or order or warrant issued by the justice, need not allege malice or want of reasonable and probable cause in his declaration. But no action in such case shall be brought until such conviction shall have been quashed; nor shall any action be brought for any thing done under any warrant issued by such justice to procure the appearance of a party, which shall have been followed by a conviction or order, until the same shall have been quashed.

Malice, &amp;c., when not necessary to allege.

No action until conviction quashed.

14. If a warrant shall not have been followed by a conviction or order, or if it be a warrant upon an information for an alleged indictable offence, and a summons had been previously issued and served, and the party did not appear in obedience to the summons, in any such case no action shall be maintained against the justice for anything done under the warrant.

No action where no conviction.

15. Where a conviction or order shall be made by a justice, and a warrant of distress or commitment issued by some other justice in good faith and without collusion, no action shall be brought against the justice who granted the warrant, for any defect in the conviction or order, or for want of jurisdiction in the justice who made it; but the action, if any, shall be brought against the justice who made such conviction or order.

No action for proceeding under conviction by another justice.

16. Where a poor or county rate shall be made, and a warrant of distress shall issue against a person rated therein, no action shall be brought against the justice who granted the warrant for any irregularity or defect in the rate, or by reason of any such person not being liable to be rated.

No action for issuing warrant of distress for county rates, &amp;c.

17. Where a warrant of distress or of commitment shall be granted by a justice upon conviction or order, which either before or after the granting the warrant shall have been confirmed upon appeal, no action shall be brought against the justice granting the warrant for anything done thereunder, by reason of any defect in such conviction or order.

No action for proceeding under defective conviction when confirmed on appeal.



## CHAP. 101.

Action brought contrary to this Chapter may be quashed.

18. If any action shall be brought in a case where by this Chapter it is forbidden, a judge of the court where it is brought, upon application of the defendant upon affidavit, may set aside the proceedings, with or without costs, as he shall see fit.

Action, month's notice of.

19. No action shall be commenced against a justice for any thing done in the execution of his office, until one month at least after notice in writing of such intended action shall have been delivered to him or left at his usual place of abode, by the party intending to commence the action, his attorney or agent; in which notice the cause of action and the court in which it is intended to be brought, shall be explicitly stated; and upon the back thereof shall be endorsed the name and place of abode of the party intending to sue, and the name and place of abode or of business of the attorney or agent, if the notice has been served by an attorney or agent; and the place of trial in every such action shall be stated to be in the county where the act complained of was committed; and such action shall be brought within six months next after the cause of action shall have accrued.

Notice, contents of.

Action, limitation of.

Justice may tender amends or pay money into court after notice and before action.

20. After notice so given and before action commenced, such justice may tender to the party complaining, his attorney or agent, such sum of money as he may think fit, as amends for the injury complained of in the notice; and after action commenced, and before issue joined, the defendant, if he have not made a tender, or in addition to the tender, may pay money into court; and the tender and payment into court or either of them may be given in evidence on the trial. If the jury shall be of opinion that the plaintiff is not entitled to damages beyond the sum tendered or paid into court, then they shall find a verdict for the defendant, and the plaintiff shall not be at liberty to elect to be non-suit; and the sum so paid into court, or so much thereof as shall be sufficient to satisfy the defendant's costs, shall thereupon be paid out of court to him, and the residue if any be paid to the plaintiff; or if the plaintiff shall elect to accept the money so paid into court in satisfaction of damages in the action, he may obtain a judge's order for the money, and that the defendant shall pay him his costs to be taxed, and thereupon the action shall be determined, and the order shall be a bar to any other action for the same cause.

Proof required on part of plaintiff.

21. If at trial the plaintiff shall not prove that the action was brought within the time limited in that behalf, or that the notice was not given a month before action commenced, or if he shall not prove the cause of action,

stated in such notice, or that it arose in the county in CHAP. 101. which the place of trial is stated to be, the plaintiff shall be nonsuit or the jury shall give a verdict for the defendant.

22. In all cases where the plaintiff shall be entitled to recover, and he shall prove the levying or payment of any penalty or sum of money under any conviction or order as part of his damages, or if he prove an imprisonment thereunder, he shall not be entitled to recover the amount of the penalty or sum levied or paid, or any damages beyond three cents for such imprisonment, or any costs of suit, if it shall be proved that he was actually guilty of the offence of which he was convicted, or that he was liable to pay the sum he was so ordered to pay, and with respect to the imprisonment that he had undergone no greater punishment than that assigned by law for the offence of which he was convicted or for the non-payment of the sum he was so ordered to pay.

Plaintiff proved at trial of action to have been guilty of offence for which convicted, to recover nominal damages only.

23. If the plaintiff recover a verdict or the defendant allow judgment to pass by default, the plaintiff shall recover costs as if this Chapter had not passed. If it be stated in the statement of claim that the act complained of was done maliciously and without reasonable and probable cause, the plaintiff, if he recover a verdict for any damages, or if the defendant allow judgment to pass by default, shall be entitled to full costs.

Costs.

24. Each and every of the foregoing provisions for the protection of justices of the peace shall apply as well to stipendiary magistrates; and the twelve foregoing sections shall be read as if the words "or stipendiary magistrate" were inserted therein next after the word justice.

Application of Chapter to stipendiary magistrates.

25. Where a justice of the peace or stipendiary magistrate shall refuse to do any act relating to the duties of his office, the party requiring such act to be done may apply to the Supreme Court, upon affidavit of the facts, for a rule calling upon the justice, and also upon the party to be affected by such act, to shew cause why such act should not be done; and if, after service of such rule, good cause be not shewn against it, the court may make the rule absolute, with or without costs, as they may see meet; and the justice of the peace or stipendiary magistrate, upon being served with the rule absolute, shall obey the same, and do the act required. No action or proceeding shall be commenced or prosecuted against such justice or stipendiary magistrate for having obeyed such rule.

Supreme Court may compel justice, &c., to perform the duties of his office.

CHAP. 102.

## SCHEDULE.

## A.

I, A. B., of ———, in the County of ———, Esquire, do swear that I was duly appointed a justice of the peace for the said County of ———, in or about the year one thousand eight hundred and ———, and that I was duly sworn in as such justice of the peace; that I have acted, since I was so sworn in, in the capacity of a justice of the peace in such county; and I further swear that I have never been dismissed or discharged from the commission; and I lastly swear that the commission in which I was named and appointed has been lost or mislaid; and that I am a justice of the peace in and for the said county.

## CHAPTER 102.

## OF CIVIL PROCEDURE IN MAGISTRATES' COURTS.

Jurisdiction of single justice \$20; of two justices \$80.

May sue executors or administrators.

When defendant does not reside in county where summons issued, plaintiff to deposit with justice a sum equal to ten cents per mile each way of distance between residence of defendant and place of trial.

1. In actions for debt, where the whole dealing or cause of action does not exceed twenty dollars, one justice, and where the whole dealing or cause of action exceeds twenty dollars and does not exceed eighty dollars, two justices of the peace for the county wherein the defendant resides or where the debt or cause of action arose, shall have jurisdiction, and they shall have power to sue executors or administrators.

2. In all cases where the defendant does not reside in the county where the summons was issued, it shall be incumbent on the justice or justices before issuing such summons to require the plaintiff to deposit with him a sum equal to ten cents per mile each way of the distance between the residence of the defendant and that of the place of trial, such sum to be held by the justice until after the trial of the cause, and which shall be paid to plaintiff after final judgment in favor of plaintiff is entered below, or on appeal; and in case the plaintiff shall become nonsuit, discontinue, or judgment shall for any other cause be given for defendant, the justice shall pay over such deposit forthwith to the defendant toward defraying his personal expense in attending said suit, in addition to any other lawful expenses he may be entitled to; and in the event of an appeal from such judgment such deposit shall

be sent to the clerk of the County Court with the papers CHAP. 102.  
 in the cause, and before any summons or *capias* shall issue the amount of said deposit shall be endorsed on the writ ; and in case said deposit shall not be actually paid in as aforesaid, and endorsed on both the original and copy, the said writ and service shall be void.

3. In all cases when the justice who has signed the summons or *capias* shall be sick, or otherwise unavoidably absent and unable to attend the trial, it shall be lawful for any other justice for such county to act in such trial, and to give judgment. In case justice incapacitated other justice may act.

4. All writs and executions shall be directed to and served and executed by a constable of the county where the defendant resides. Writs to be directed to constable of county where defendant resides.

5. When any person shall claim that another is indebted to him in an amount not less than four dollars nor more than eighty dollars, and by himself or his agent having personal knowledge shall make oath before a justice of the peace that such person is so indebted, specifying the amount of the debt, and that the deponent verily believes that unless such person is arrested the debt will be lost, and that he verily believes that such person is about to leave the county, and shall in said affidavit set forth particularly the grounds for his belief that the debtor is about to leave the county, it shall be lawful for a justice of the peace, where the amount claimed is not more than eighty dollars, to issue a writ of *capias* in the form in the schedule to this Chapter, or the justice may in his discretion issue a summons. Capias, how issued.

6. No minor shall be arrested on a writ of *capias* issued by a justice, nor shall any person be arrested under a *capias* for a debt under four dollars. Exemptions from writ of capias.

7. Any person arrested on any such writ shall be admitted to bail by the officer in the same manner as in other cases of arrest ; but in case the party arrested shall be committed to jail, the constable who committed him, or the sheriff, on demand of the prisoner, shall take him before the justice or justices when and where the cause is to be tried as often as may be necessary for the trial of the cause, that he may be present during such trial, and attend to the same, and shall have him in his custody during such time ; and the constable or other officer so conveying him shall, if judgment be against him for any sum, unless he shall forthwith pay the same, re-convey him to gaol ; but should the party so arrested appeal from any judgment, he shall on perfecting his appeal be forthwith discharged from prison. The constable or other officer so conveying him shall be entitled to ordinary constable fees per mile Persons arrested admitted to bail. Present during trial.  
Discharged on perfecting appeal.  
Constable's fees of travel.

**CHAP. 102.** travel, to be taxed in the costs on judgment against the unsuccessful party; and the sheriff shall not be liable for any escape of the party while out of his actual custody under this section.

Escape; when sheriff not liable.

Causes, at what hour tried. 8. All causes shall be tried between the hours of ten o'clock in the forenoon and six o'clock in the afternoon of the day on which process is made returnable.

Continued by justices if necessary. 9. When from the number of causes to be tried a cause cannot be heard and determined within the time specified in the next preceding section, or in case the justice shall not be prepared to pronounce his judgment on the day of trial, or when sufficient cause on affidavit is shewn, the justice or justices may continue the cause till some further time, not exceeding thirty days, upon such terms as to costs, security, or otherwise, as he or they may deem right; of which continuance he or they shall notify the parties, plaintiff and defendant.

Suit, how conducted. 10. The suit may be conducted and the amount collected upon the same rules in a summary form, and subject to a like defence, as if the suit were brought in the Supreme Court.

Particulars of account or note, filed before writ, issues. 11. No justice shall issue any writ of summons or capias, unless the party applying therefor shall file a statement in writing containing the particulars of his cause of action, or of the promissory note or other instrument on which he is suing, a copy of which shall be furnished to the defendant by the justice if required. When final judgment shall have passed thereon, the statement, note, or other instrument shall be filed with the justice, and in cases of appeal shall be transmitted with the other papers in the cause.

Particulars annexed to summons. 12. A statement in writing of the particulars of the plaintiff's claim, shewing both debits and credits, shall be annexed to the original summons; and a copy thereof, to be prepared by the justice issuing the writ, shall be annexed to the copy of such summons and served therewith.

Copy of summons, when delivered to defendant. 13. A copy of the summons or capias shall be delivered to the defendant, at least five days, when the amount is under forty dollars, and when above forty dollars, ten days before the return day thereof; and the constable serving the same shall if required explain such writ to the defendant. A notice in the form in the schedule requiring the defendant to file his set-off, if any, shall be endorsed on the summons or capias and copy.

Return of writ, how made. 14. The constable shall make return of such writ with his doings thereon on or before the return day, and if required by the justice shall make an affidavit of the

manner in which he has served the same, and the date of CHAP. 102. such service.

15. When the defendant does not personally appear the justice shall not proceed in the cause, unless the constable shall make an affidavit that he has delivered a copy of such writ, with a statement in writing of the plaintiff's particulars annexed, to the defendant, and if by the defendant at the time of service required so to do, that he explained the contents thereof to the defendant.

Affidavit of service required when defendant does not appear.

16. When the whole cause of action exceeds ten dollars, either party may obtain a jury by applying therefor to the justice who issued the summons or capias, at least two days before the return day of the process.

When cause of action exceeds \$10, jury may be obtained.

17. When a jury has been demanded, the justice shall issue a venire, directed to a constable not being of kin to either party or interested in the suit, commanding him to summon a jury of three persons qualified to act as petit jurors from the township or place wherein the action is to be tried, to appear at the time and place therein to be specified.

Jury, how summoned.

18. Any juror so summoned who shall neglect to appear, and shall not show to the justice or justices some sufficient excuse therefor, shall forfeit one dollar, to be levied by warrant of distress upon his goods; such warrant to be issued by the justices upon the oath of the officer that he had summoned the juror at least twenty-four hours before the time appointed for his appearance.

Fine for non-attendance of juror.

19. The jury shall be sworn by one of the justices in open court "well and truly to try the cause according to the evidence;" and the evidence of the witnesses produced shall be made and delivered in the hearing and presence of the justices and jury so empanelled; and having heard the directions of the justices, the jury shall, if they require it, retire to some convenient room under the charge of some constable, or in case no constable shall be in attendance, such other person as shall by such justices be appointed for that purpose, who shall be sworn "to keep such jury together, and not to suffer any one to speak to them, nor to speak to them himself, without leave of the justices;" and when agreed, the jury shall return their verdict, whereupon judgment shall be given accordingly.

Jurors, how sworn; proceedings until verdict.

20. Either party may challenge for cause any of the jurors, and if the challenge be allowed, or any of the jurors do not appear, the justices shall direct the constables forthwith to summon any person duly qualified, and not liable to be challenged, to fill up the jury.

Challenge for cause; jury, how filled up.

21. In all cases under this Chapter, whether the defendant appears or not, and the plaintiff's demand or cause of action is not confessed by the defendant in person

Proof on oath of one witness, where action not confessed.

CHAP. 102. or in writing under his hand, the same shall be established on the oath of one witness.

Plaintiff's proof confined to statement filed.

22. The plaintiff shall not be permitted to give evidence of anything not contained in the statement filed by him previous to the issue of the writ.

Written appearance, &c., not required. Defendant to file or serve set-off two days before return of writ.

23. No written appearance, pleas, or grounds of defence shall be required, but a defendant who intends to rely upon a set-off shall file the same with one of the justices issuing the writ, or serve it on the opposite party, at least two days before the return day of the summons and before trial; and he shall be precluded from giving in evidence by way of set-off anything not contained in the statement. The justice if required shall furnish the plaintiff with a copy thereof.

If defendant prove set-off equal to or exceeding plaintiff's demand proved, judgment accordingly.

24. Whenever the defendant shall establish a set-off equal to or exceeding the demand proved by the plaintiff, or any other sufficient defence thereto, the defendant shall have judgment: if the set-off be less than the plaintiff's demand the plaintiff shall have judgment for the residue only with costs; and if the set-off exceeds the plaintiff's demand as proved, and the whole amount of such set-off do not exceed eighty dollars, the defendant shall in that case have judgment for such excess.

When tender before suit and amount paid in judgment for defendant.

25. When it shall appear that the defendant had tendered the amount due before suit brought, such defendant may before the trial pay the same into the hands of the justice, and shall thereupon be entitled to his costs, which shall be deducted by the justice out of the money so paid into his hands.

Costs to party succeeding.

26. The party succeeding shall in all cases be entitled to his costs.

Execution, how issued in case of death, &c., of justice.

27. Where judgment has been awarded, the justice or justices before whom the suit was tried, and in case of the death, resignation, or removal of such justice or justices, any other justice, and when such cause has been tried before two justices, in case of the death, resignation or removal of one of them, the remaining justice, shall at the instance of the party obtaining judgment issue execution against the goods and chattels for the sum awarded with costs or for costs, as the case may be.

Return of executions.

28. All executions shall be made returnable in thirty days.

Execution not to issue after one year, except in certain cases.

29. No execution shall issue after the lapse of one year from the time of giving judgment, unless it shall be made to appear by affidavit that a balance is still due thereon, and that due diligence has been used to levy the same, in which case further executions may issue for the balance at

any time within four years after the rendering of the judgment. CHAP. 102.

30. The constable to whom the execution shall be delivered shall proceed forthwith to levy for the sum due, and shall take sufficient goods of the party against whom the execution is issued to satisfy the same, and shall cause an advertisement, describing the goods taken, and specifying the time and place of the sale, to be posted up in two or more public places in the township or place wherein such sale is to be held, at least five days before the time appointed for such sale.

Duty of constable in levying execution on personal property.

31. At the time and place so appointed, if the amount remain unpaid, the officer acting therein shall sell the goods at auction to the highest bidder, and shall forthwith return the execution, with his doings thereon, to the justice who issued the same, and pay the debt and costs levied thereon to the plaintiff or his agent duly authorized, after deducting the fees of levy and sale, returning the surplus if any to the person against whom the execution issued or his agent duly authorized, or in his absence, to the justice, for the use of such party; and if the goods shall remain unsold for want of buyers, the constable may adjourn the sale for any period not less than twenty-four hours nor more than six days, and may in such case proceed to advertise anew, and sell the same after the return day of the execution. Immediately after such sale he shall make return and payment as above specified; and whatever goods remain unsold after satisfying the execution and expenses, shall be restored.

Sale, how conducted; return of execution; money to whom payable; adjournment of sale.

Goods unsold to be restored.

32. No constable shall directly or indirectly purchase any goods at any sale made by him under this Chapter; and every such purchase shall be absolutely void.

Constables not to purchase.

33. For want of goods whereon to levy, the constable, if instructed so to do, shall commit the person against whom the execution issued to gaol; but no execution to commit the person against whom judgment has been obtained to gaol shall issue without the express order therefor to the justice or justices from the party requiring the same, and instructions to take the body shall in all such cases be endorsed on the execution.

For want of goods party may be committed.

#### APPEAL.

34. The party dissatisfied with the judgment of the justice or justices may appeal to the next term or sittings of the County Court in the county in which the trial is had, provided that before any appeal is allowed the appellant, or in his absence his agent, before the appeal shall be perfected, shall make an affidavit in writing that he is

Appeal, and manner of proceeding thereon.



CHAP. 102. dissatisfied with the judgment and feels aggrieved thereby, and that such appeal is not prosecuted for the purpose of delay, and shall file the same with the justice; and the party so appealing, or in his absence his agent, shall within ten days after the judgment enter into a bond with sufficient surety in a penalty not less than double the amount of the judgment, and not in any case less than twenty-five dollars, with a condition that the appellant shall enter and prosecute his appeal and perform the judgment of the court, or render the body of the appellant and pay the costs accruing on the appeal; or shall before the first day of the term of such court pay the amount of the judgment together with all costs thereon subsequently accruing, and such justice, or if the action be before two justices then the first one applied to therein, if thereto required, shall prepare the affidavit and appeal bond; which appeal if applied for at any time within fifteen days after judgment in such cause, such justice or justices shall be bound to grant returnable to the next term of the County Court in the county in which the trial was had; and execution, if not issued when the appeal is applied for and the appellant or his agent shall make or be ready to make the affidavit, shall be stayed; but in such case, if the defendant have given bail, his bail shall continue liable notwithstanding his personal appearance until they shall render him, or he shall give an appeal bond within the ten days herein prescribed; and if execution has issued before the appeal is applied for, it shall be stayed on the same being perfected, on the order of the issuing justice to be granted at the instance of the appellant and duly served upon the constable. The affidavit for appeal or for a writ of *capias* may be sworn before any justice of the peace, and the bond may be executed before any credible witness, and need not be executed before the justice or justices who tried the cause.

Sureties may  
render appellant

35. The sureties to the appeal bond shall have the power to render the appellant, and the sheriff shall be bound to receive him at any time after the trial *de novo*, in the same manner as defendants are now rendered by bail to a *capias* issued out of the Supreme Court.

Parties confined  
to original case.

36. The County Court before which the trial *de novo* shall take place shall confine the parties to the particulars and set-off filed before the magistrate, and shall permit no amendment therein.

Justice to trans-  
mit papers with  
transcript of  
judgment and  
costs to County  
Court.

37. The justice or justices before whom the cause appealed was tried shall, not later than one week after the appeal is perfected, send to the clerk of the County Court, or to his deputy, provided the cause was tried in a district where a deputy is appointed and a County Court is held,

all the appeal papers in the cause appealed, together with CHAP. 102.  
 the appeal bond and a transcript of his or their judgment,  
 and a statement of the costs below to which each party  
 would have been entitled in the event of his having  
 succeeded below.

38. This Chapter shall apply wherever practicable, Stipendiary ma-  
 gistrate to have  
 power of two  
 justices.  
 and except as may be otherwise provided to all stipendiary  
 magistrates, and to the procedure in the courts held by  
 such magistrates, and such magistrates shall within their  
 several jurisdictions have and exercise all the powers and  
 jurisdiction conferred by this Chapter on two justices of  
 the peace.

39. Any constable neglecting to serve or make return Fine for consta-  
 ble neglecting to  
 return writ.  
 of a writ of summons or *capias*, besides being liable to an  
 action on the case for any damage that may have been  
 sustained, shall forfeit four dollars.

40. Any constable neglecting to return an execution Fine and pro-  
 ceedings where  
 constable neg-  
 lects to return  
 execution.  
 for the space of ten days after the return day thereof,  
 unless with the consent of the party in whose favor it was  
 issued, or to pay over within five days the moneys received  
 thereon, or to pay the surplus if any on demand, shall  
 forfeit four dollars, and may also be sued in an action for  
 money had and received; and the justices shall have  
 jurisdiction though the sum exceed forty dollars.

41. All writs of summons, *capias*, subpoena, and *venire* Process, how is-  
 sued, &c.  
 shall require but one seal, and may be issued by a single  
 justice whatever may be the amount claimed, provided  
 such amount does not exceed eighty dollars; and the same,  
 as well as all executions in cases before two justices, shall  
 where practicable be prepared by the justice first applied  
 to in the suit. In all cases the *capias* shall where prac-  
 ticable be endorsed by the justice first applied to, who  
 if required by the plaintiff is to prepare the affidavit also.  
 In all suits triable before two justices, the execution shall  
 have two seals, and shall where practicable, and except as  
 herein otherwise provided, be signed by the two justices  
 who tried the cause. All affidavits shall be taken before,  
 and all oaths under this Chapter shall be administered by,  
 one justice only; and in all suits before two justices, all  
 acts required to be done by one justice only shall where  
 practicable be had and done by and before the justice  
 first applied to, who is to be the keeper of all papers in  
 the cause, and to make return of the proceedings therein  
 in cases of appeal.

42. The costs and fees taxable under this Chapter Costs and fees.  
 shall be according to the scale of fees for magistrates and  
 constables under the chapter of the Revised Statutes, "Of  
 Costs and Fees."

43. The forms shall be as in the Schedule.

Forms.

CHAP. 102.

## SCHEDULE.

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Summons.

County of \_\_\_\_\_, SS.

To any of the Constables of the County of \_\_\_\_\_ :

You are hereby required to summon A. B., of \_\_\_\_\_, to appear at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—, at \_\_\_\_\_ o'clock in the \_\_\_\_\_noon, before such Justice or Justices as shall then be there, to answer to C. D., in the sum of \_\_\_\_\_, and to make return hereof on or before the said day.

Witness my hand and seal at \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

E. F., J. P. (Seal.)

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Capias.

County of \_\_\_\_\_, SS.

To any of the Constables of the County of \_\_\_\_\_ :

You are hereby required to take A. B., of \_\_\_\_\_, and him safely keep, so that you may have him at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—, in the \_\_\_\_\_noon, before such Justice or Justices as shall then be there, to answer to C. D., in the sum of \_\_\_\_\_, whereof fail not, and to have there then this writ with your doings thereon.

Witness my hand and seal at \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

E. F., J. P. (Seal.)

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*Notice to be endorsed on the Summons or Capias.*

Take notice that unless forty-eight hours before the return day of this summons, (*or, capias, as the case may be,*) you file the particulars of your set-off to the plaintiff's claim with the magistrate issuing the writ, or serve the same on the plaintiff, you will not be permitted to give evidence of any such set-off.

NOTE.—*On the back of the capias and copy thereof, besides the above notice, to be endorsed the sum sworn to in words at length, as follows :*

By oath for the sum of \_\_\_\_\_,

E. F., J. P.

*Affidavit to obtain Capias.*

I, A. B., of ———, in the County of ———, make oath and say that C. D., is justly indebted to ——— in the sum of ——— after giving full credit to the best of my knowledge and belief for all payments and offsets, that the cause of action does not exceed eighty dollars, and I verily believe that the said C. D. is about to leave the county, and that unless a writ of capias be granted the debt will be lost. I have personal knowledge of the truth of the foregoing statements, and the grounds of my belief that the said C. D. is about to leave the county are as follows: (*Here state the grounds.*)

Sworn to at ———, in the County of ———, this ——— day of ———, A. D. 18—, Before me. ———, J. P.	}	(Sgd.)    A. B.
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*Execution.*

County of ———, SS.

To any of the constables of the said County :

Whereas judgment hath been awarded against C. D., of ———, at the suit of A. B., for the sum of ———, and ——— more for costs: these are therefore to command you to levy from off the goods and chattels of the said C. D. such sums, making together ———, by sale of such goods and chattels, after duly advertising the same; and for want thereof you are hereby required to take the body of the said C. D., and him commit to Her Majesty's gaol, (*or, where there is a lock-up house or other place of confinement in any county nearer the residence of the party to be arrested, insert the name of it in place of the gaol,*) in ———, the keeper whereof is required to take the said C. D. into his custody, and him safely keep until he pay the sum above mentioned, with your fees and gaoler's fee, or that he be discharged by the said A. B. or otherwise by due course of law. Whereof fail not, and make due return of this writ with your doings thereon to ——— within ——— days. Witness ——— hand and seal the ——— day of ———, 18—.

E. F., J. P. (Seal.)

G. H., J. P. (Seal.)

CHAP. 102.*Subpœna.*

County of \_\_\_\_\_, SS.

To J. K., L. M., N. O. and P. Q.

(according to the number.)

You and every of you are required to appear at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, at the hour of \_\_\_\_\_ o'clock, in the \_\_\_\_\_noon, to give evidence on the part of the (plaintiff or defendant, *as the case may be*.) in a suit now depending between A. B., plaintiff, and C. D., defendant, and then and there to be tried, which you are not to omit under penalty of the law in such cases made and provided.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18—.

E. F., J. P. (Seal.)

\_\_\_\_\_

*Subpœna Ticket for each Witness.*

Between { A. B., plaintiff,  
          and  
          C. D., defendant.

J. K. is required to give evidence in this suit, on the part of the (plaintiff or defendant, *as the case may be*.) at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ o'clock, in the \_\_\_\_\_noon.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18—.

E. F., J. P.

\_\_\_\_\_

*Venire.*

County of \_\_\_\_\_, SS.

To any of the constables of the said County :

You are hereby required to summon three persons duly qualified to sit as jurors, who are not of kin to either of the parties, to come and be present at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ o'clock, in the \_\_\_\_\_noon, to make a jury between \_\_\_\_\_, plaintiff, and \_\_\_\_\_, defendant.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18—.

E. F., J. P. (Seal.)

\_\_\_\_\_

RETURNS TO WRITS.

*To a Summons.*

The within process was duly served on the said C. D. on the \_\_\_\_\_ day of \_\_\_\_\_, by me.

O. P., Constable.

*If required, the following affidavit to be made by the* CHAP. 102.  
*officer serving the process :*

O. P., of ———, in the County of ———, maketh oath and saith, that he did on the ——— day of ——— personally serve the defendant in the annexed process named, with a true copy thereof, and at the same time acquainted ——— with the contents thereof.

O. P.

Sworn before me at ———, the ——— day of ———,  
18—, E. F., J. P.

*To a Capias.*

The within named defendant was arrested and served with a copy of the within process on the ——— day of ———, and was admitted to bail by me.

O. P., Constable.

*To a Venire.*

I have summoned the within jurors as jurors for the trial of the within cause, namely: G. H., J. K., L. M., and N. O.

O. P., Constable.

*To an Execution.*

I have levied the debt and costs as within directed.

O. P., Constable.

For want of goods and chattels whereon to levy, I have taken the body of the within named C. D. and committed him to gaol as within directed.

O. P., Constable.

I have levied the sum of ———, part of the debt and costs within mentioned, the remainder not satisfied.

O. P., Constable.

I could not find any goods or chattels, or the body of the said C. D.

O. P., Constable.

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OATHS TO BE ADMINISTERED TO WITNESSES, JURORS, AND CONSTABLES,  
ON TRIALS.

*Witnesses.*

The evidence you shall give to the court (*or*, to the court and jury sworn) touching the matter in question, shall be the truth, the whole truth, and nothing but the truth. So help you God.

CHAP. 102.

*Jurors.*

You shall well and truly try this cause between A. B., plaintiff, and C. D., defendant, and a true verdict give according to the evidence. So help you God.

*Constable or other person appointed to attend Jury.*

You shall keep every one of the jury sworn, and now about to make up their verdict, in some convenient place; you shall not suffer any person to speak to them, nor shall you speak to them yourself, except it be to ask if they are agreed on their verdict, without the leave of the court. So help you God.

*Bail Bond on Capias.*

Know all men by these presents that we (*names, places of residence, and professions or callings of the defendant and his bail*), are held and firmly bound unto (*name of the plaintiff in the suit, adding his place of residence and profession or calling*) in the sum of (*twice the amount sworn to and endorsed on the capias*) to be paid to the said (*name of the plaintiff*), his certain attorney, executors, administrators or assigns, for which payment we bind ourselves, and every of us by himself, our and every of our heirs, executors and administrators, firmly by these presents, sealed with our seals, and dated the — day of —, 18—.

The condition of the foregoing obligation is such that if the above bounden (*the defendant*) shall appear at — on the — day of —, A. D. 18—, before such justice or justices as shall then be there, to answer to the suit of the above named (*name of the plaintiff*) in the sum of (*here insert the sum sworn to,*) then the above obligation to be void.

Signed, sealed and delivered	}	— ——. (Seal.)
in the presence of		— ——. (Seal.)
— ——.		— ——. (Seal.)

*Affidavit to be made by the Party Appealing.*

In the Magistrates Court, 18—.

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

I, A. B., (*the party making the appeal*) of —, in the County of —, the above named (*plaintiff or defendant, as the case may be, or, if the party for whom the appeal is made be absent, say agent for the above named plaintiff or defendant, as the case may be,*) make oath and say

that I am really dissatisfied with, and feel aggrieved by, CHAP. 102.  
 the judgment given in this cause, and that I do not appeal  
 therefrom for the purpose of delay, but that justice may  
 be done therein.

Sworn at _____, the } _____ day of _____, } 18—, before me, } _____, J. P.	To be signed by the party appealing, or in his absence, the agent.
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*Bond to be given on Appeal being made.*

Know all men by these presents, that we, A. B., C. D.,  
 and E. F., (*names of the appellant if he be present, or, if  
 absent, of the agent, and the sureties, with their places of  
 residence,*) are held and firmly bound to G. H., (*the party  
 against whom the appeal is allowed*) in the sum of (*here  
 insert the proper sum as required by section 34,*) to be  
 paid to the said G. H., his certain attorney, executors,  
 administrators or assigns, for which payment we bind  
 ourselves, and every of us by himself, our and every of  
 our heirs, executors and administrators, firmly by these  
 presents, sealed with our seals, and dated the \_\_\_\_\_ day  
 of \_\_\_\_\_, 18—.

Whereas a certain cause between the above bounden  
 A. B., (*if the party appellant be the principal in the bond,  
 or, if he be absent then say between—name the appellant,*)  
 and the above named G. H., in which the said (*name the  
 appellant*) was (*plaintiff or defendant, as the case may be,*)  
 tried before (*name the justice or justices before whom the  
 trial was made,*) justice of the peace for the County of  
 \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, and judgment was  
 given in favor of the said G. H. for the sum of \_\_\_\_\_, debt  
 and costs, and an appeal therein hath been demanded on  
 behalf of the said (*name the party appealing*): Now the  
 condition of the above obligation is such that if the said  
 (*name the appellant*) at the next sitting or term of the  
 County Court for the County of (*name the county in  
 which the cause was tried*) shall duly enter and prosecute  
 his said appeal, and shall proceed therein to final judgment,  
 and shall abide by and fulfil the judgment of the said  
 Court to be given in such appeal, or render the body of  
 the appellant and pay the costs accruing on the appeal, or  
 shall previous to the first day of the sitting of such Court  
 pay the full amount of judgment in such cause, together  
 with all costs subsequently accruing thereon, then the  
 above obligation to be void.

Signed, sealed and delivered } in the presence of } _____, }	A. B. (Seal.) C. D. (Seal.) E. F. (Seal.)
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## CHAP. 103.

## CHAPTER 103.

OF SUMMARY CONVICTIONS AND ORDERS BY JUSTICES OF  
THE PEACE.

Procedure for recovery of penalties, etc., not otherwise provided for, to be according to this Chapter.

1. Where a penalty or punishment is imposed under the authority of any statute of the Province of Nova Scotia, or of any other statute or law now or hereafter to be in force in the Province of Nova Scotia, or of any by-law enacted under the authority of any Act of the Legislature, and relating to matters within the legislative authority of the Legislature of the said Province, and is recoverable before or may be inflicted by a justice or justices of the peace, or a police or stipendiary magistrate, unless in such Act or by-law it is otherwise enacted or declared, the proceedings for recovering the penalty, compelling the attendance of the parties or witnesses, hearing the complaint, and for the conduct of the court, the taking and estreating of recognizances, and the inflicting of the punishment, and otherwise in respect thereof, shall be as in this Chapter defined, and the convicting justice or justices, or police or stipendiary magistrate, shall perform in respect thereto the duties and functions in this Chapter declared.

ptions.

2. Nothing in this Chapter contained shall apply to proceedings under chapter 35 of the Revised Statutes, "Of the Settlement and Support of the Poor," or to proceedings under chapter 37 of the Revised Statutes, "Of the Maintenance of Bastard Children," or to proceedings under chapter 75 "Of Licenses for the sale of Intoxicating Liquors;" nor shall anything in this Chapter refer to the procedure of the City Criminal Court or the Police Court of the City of Halifax, or to proceedings before the stipendiary magistrate of said city; but in all such cases the practice and procedure shall be as heretofore, and all fines, penalties and forfeitures which before the passing of this Chapter could be sued for and recovered in any of the courts in this section mentioned, or in the City Civil Court, may be sued for and recovered in the same manner as heretofore, and with the like procedure.

Penalties not recoverable as a debt or private debt, to be recoverable under this Chapter.

(1.) Nothing in this Chapter contained shall apply to the case of any fine or penalty imposed by any statute wherein it is expressly declared that such fine or penalty is to be sued for or recovered as a debt, or as a private debt; but in all such cases the procedure and practice shall be the same as before the passing of this Chapter, provided that in all cases where a fine or penalty is imposed by any statute, or by any by-law or ordinance made under the authority of any statute, and the amount thereof does not

exceed forty dollars, and it is not expressly declared that the same is to be sued for or recovered as a debt or as a private debt, the same shall be recoverable before and may be inflicted by two justices of the peace or a stipendiary or police magistrate, and the proceedings in relation thereto and to all matters connected therewith shall be as in this Chapter defined, and as if the same were expressly declared to be recoverable before or to be inflicted by such justices of the peace or stipendiary or police magistrate, on summary conviction. CHAP. 103.

3. In all cases where an information is laid before any one or more justices of the peace, police or stipendiary magistrate for any territorial division of the Province, that any person being within the jurisdiction of such justice or justices, or a police or stipendiary magistrate, has committed any offence or act over which the Legislature of Nova Scotia has legislative authority, and for which he is liable by law upon summary conviction for the same before a justice or justices, or a police or stipendiary magistrate, to be fined or imprisoned, or both fined and imprisoned, and also in all cases where a complaint is made to any such justice or justices, or police or stipendiary magistrate, in relation to any matter over which the Legislature of Nova Scotia has legislative authority, and upon which such justice or justices, or police or stipendiary magistrate, have authority by law to make an order for the payment of money or otherwise, such justice or justices, or police or stipendiary magistrate, may issue his or their summons (A), directed to such person, stating shortly the matter of the information or complaint and requiring him to appear at a certain time and place before the same justice or justices, or before such other justice or justices of the same territorial division as may then be there, to answer to the said information or complaint, and to be further dealt with according to law.

When an information is laid, etc., before a justice of the peace, &c., such justice may issue a summons to party accused.

Form of summons.

4. Every such summons shall be served by a constable or other peace officer, or other person to whom the same may be delivered, upon the person to whom it is directed, by delivering the same to the party personally, or by leaving it with some person for him at his last or most usual place of abode.

Service of summons.

5. The constable, peace officer or person who serves the same shall attend at the time and place, and before the justice or justices in the summons mentioned, to depose if necessary to the service thereof.

Proof of service

6. But nothing hereinbefore contained shall oblige any justice or justices of the peace to issue any such summons in any case where the application for any order of justices is by law to be made *ex parte*.

Proviso as to *ex parte* cases.

## CHAP. 103.

7. No objection shall be allowed to any information, complaint or summons for any alleged defect therein in substance or in form, or for any variance between such information, complaint or summons, and the evidence adduced on the part of the informant or complainant at the hearing of such information or complaint; but if any such variance appears to the justice or justices present and acting at such hearing to be such that the person summoned and appearing has been thereby deceived or misled, such justice or justices may, upon such terms as he or they think fit, adjourn the hearing of the case to a future day.

Proviso.

If the summons having been duly served, &c., is not obeyed, the justice may issue his warrant.

8. If the person served with a summons does not appear before the justice or justices at the time and place mentioned in the summons, and it be made to appear to the justice or justices by oath or affirmation that the summons was duly served what the justice or justices deem a reasonable time before the time therein appointed for appearing to the same, then the justice or justices upon oath or affirmation being made before him or them substantiating the matter of the information or complaint to his or their satisfaction, may if he or they think fit issue his or their warrant (B) to apprehend the party so summoned and to bring him before the same justice or justices or before some other justice or justices of the peace in and for the same territorial division, to answer to the said information or complaint, and to be further dealt with according to law; or the justice or justices before whom any such information is laid for any such offence or act as aforesaid, punishable on conviction, upon oath or affirmation being made before him or them substantiating the matter of the information to his or their satisfaction, may, if he or they think fit, instead of issuing a summons issue in the first instance his or their warrant (C) for apprehending the person against whom the information has been laid and bringing him before the same justice or justices, or before some other justice or justices of the peace in and for the same territorial division, to answer to the information and to be further dealt with according to law: Provided that where a warrant is issued in the first instance the justice issuing it shall furnish a copy or copies thereof, and cause a copy to be served on each party arrested at the time of such arrest; and provided further that no such warrant shall issue in the first instance unless oath or affirmation be made by the party applying therefor, that he verily believes that the person against whom the same is applied for is about to leave the Province, and that he verily believes that such person will escape the penalty or imprisonment unless such warrant be issued.

Warrant may issue in the first instance on information supported by oath, &c.

Proviso.

Copy of warrant to be served on defendant.

Proviso.

9. If where a summons has been issued, and upon the day and at the place therein appointed for the appearance of the party summoned, the party fails to appear in obedience to the summons, then if it be proved upon oath or affirmation to the justice or justices present that a summons was duly served upon the party a reasonable time before the time appointed for his appearance the justice or justices of the peace may proceed *ex parte* to the hearing of the information or complaint, and adjudicate thereon as fully and effectually to all intents and purposes as if the party had personally appeared before him or them in obedience to the summons.

CHAP. 103.

Justice may proceed *ex parte* if summons duly served is not obeyed.

10. Every warrant to apprehend a defendant that he may answer to an information or complaint shall be under the hand and seal or hands and seals of the justice or justices issuing the same, and may be directed to any one or more or to all of the constables (or other peace officers) of the territorial division within which it is to be executed, or to such constable and all other constables in the territorial division within which the justice or justices who issued the warrant hath or have jurisdiction, or generally to all the constables (or peace officers) within such territorial division, and it shall state shortly the matter of the information or complaint on which it is founded, and shall name or otherwise describe the person against whom it has been issued, and it shall order the constables (or other peace officers) to whom it is directed to apprehend the defendant, and to bring him before one or more justice or justices of the peace of the same territorial division, as the case may require, to answer to the information or complaint and to be further dealt with according to law.

Warrant to be under hand and seal; to whom directed, and what to contain.

11. It shall not be necessary to make the warrant returnable at any particular time; but the same may remain in full force until executed; and the warrant may be executed by apprehending the defendant at any place in the territorial division within which the justices who issued the same have jurisdiction, or in case of fresh pursuit at any place in the next adjoining territorial division within seven miles of the border of the first mentioned territorial division, without having the warrant backed as hereinafter mentioned.

Duration of warrant, and how to be executed.

12. In all cases where the warrant is directed to all constables or peace officers in the territorial division within which the justice or justices who issued the same have jurisdiction, any constable or peace officer for any place within the limits of the jurisdiction may execute the warrant in like manner as if the warrant was directed specially to him by name, and notwithstanding that the

What officer may execute it, and where.

CHAP. 103. place in which the warrant is executed be not within the place for which he is a constable or peace officer.

Backing the warrant in another jurisdiction; its effect.

13. If any person against whom any warrant has been issued be not found within the jurisdiction of the justice or justices by whom it was issued, or if he escapes into, or is, or is suspected to be in any place within the Province out of the jurisdiction of the justice or justices who issued the warrant, any justice of the peace within whose jurisdiction such person may be or be suspected to be, upon proof upon oath or affirmation of the handwriting of the justice or justices issuing the warrant, may make an endorsement, upon it, signed with his name, authorizing the execution of the warrant within his jurisdiction; and such endorsement shall be a sufficient authority to the person bringing the warrant, and to all other persons to whom it was originally directed, and to all constables or other peace officers of the territorial division wherein the endorsement has been made, to execute the same in any place within the jurisdiction of the justice of the peace endorsing the same, and to carry the offender or person named therein when apprehended before the justice or justices who first issued the warrant, or some other justice having the same jurisdiction.

No objection allowed for want of form; but adjournment in certain cases; and on what conditions.

14. No objection shall be taken or allowed to any warrant issued as aforesaid for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the informant or complainant, but if it appears to the justice or justices present and acting at the hearing that the party apprehended under the warrant has been deceived or misled by any such variance, such justice or justices may upon such terms as he or they think fit, adjourn the hearing of the case to some future day, and in the meantime commit (D) the defendant to the common gaol or other prison or place of security within the territorial division or place wherein the justice or justices may be acting, or to such other custody as the justice or justices think fit, or may discharge him upon his entering into a recognizance (E), with or without surety or sureties, at the discretion of the justice or justices, conditioned for his appearance at the time and place to which the hearing is so adjourned.

Where a defendant is discharged on recognizance, and fails to appear, &c.

15. In all cases where a defendant is discharged upon recognizance and does not afterwards appear at the time and place in the recognizance mentioned, the justice who took the recognizance, or any justice or justices who may then be present, having certified (F) upon the back of the recognizance the non-appearance of the defendant may transmit such recognizance to the proper officer in the Province appointed by law to receive the same, to be proceeded

upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of the non-appearance of the said defendant, and the justice or justices may issue his or their warrant for the apprehension of the defendant on the information or complaint. CHAP. 103.

16. In any information or complaint or proceedings thereon, in which it is necessary to state the ownership of any property belonging to or in possession of partners, joint tenants, parceners, or tenants in common, it shall be sufficient to name one of such persons, and to state the property to belong to the person so named, and another or others, as the case may be; and whenever in any information or complaint, or the proceedings thereon, it is necessary to mention, for any purpose whatsoever, any partners, joint tenants, parceners or tenants in common, it shall be sufficient to describe them in the manner aforesaid, and whenever in any information or complaint, or the proceedings thereon, it is necessary to describe the ownership of any work or building made, maintained or repaired at the expense of the corporation or inhabitants of any territorial division or place, or of any materials for the making, altering or repairing the same, they may be therein described as the property of the inhabitants of such territorial division or place.

Description of property of partners, municipal corporations, &c., in any information or complaint, or proceedings thereon.

17. If it be made to appear to any justice of the peace, by the oath or affirmation of any credible person, that any person within the jurisdiction of such justices is likely to give material evidence on behalf of the prosecutor or complainant or defendant, and will not voluntarily appear as a witness at the time and place appointed for the hearing of the information or complaint, the justice shall issue his summons (G 1) to such person, requiring him to be and appear at a time and place mentioned in the summons before the said justice or any other justice or justices of the peace for the territorial division who may then be there, to testify what he knows concerning the information or complaint.

Summons to person likely to give material evidence.

18. If any person so summoned neglects or refuses to appear at the time and place appointed by the summons and no just excuse be offered for such neglect or refusal, then (after proof upon oath or affirmation of the summons having been served upon him, either personally or by leaving the same for him with some person at his last or most usual place of abode) the justice or justices before whom such person should have appeared may issue a warrant (G 2) to bring and have such person at a time and place to be therein mentioned before the justice who issued

Warrant if such person fails to appear.

**CHAP. 103.** the summons, or before any other justice or justices of the peace for the same territorial division who may be then there, to testify as aforesaid, and the said warrant may if necessary be backed as hereinbefore mentioned, in order to its being executed out of the jurisdiction of the justice who issued the same.

May be backed.

Warrant in first instance.

19. If the justice is satisfied by evidence upon oath or affirmation that it is probable that the person will not attend to give evidence without being compelled so to do, then instead of issuing a summons he may issue his warrant (G 3) in the first instance, and the warrant may, if necessary, be backed as aforesaid.

Commitment for refusal to give evidence.

20. If on the appearance of the person so summoned before the last mentioned justice or justices, either in obedience to the summons, or upon being brought before him or them by virtue of the warrant, such person refuses to be examined upon oath or affirmation concerning the premises, or refuses to take an oath or affirmation, or having taken the oath or affirmation refuses to answer such questions concerning the premises as are then put to him, without offering any just excuse for his refusal, any justice of the peace then present, and having jurisdiction, may by warrant (G 4) commit the person so refusing to the common gaol or other prison for the territorial division where the person then is, there to remain and be imprisoned for any time not exceeding ten days, unless in the meantime he consents to be examined and to answer concerning the premises.

Certain complaints need not be in writing, &c.

21. In all cases of complaint upon which a justice or justices of the peace may make an order for the payment of money or otherwise, it shall not be necessary that such complaint be in writing unless it be required to be so by some particular Act or law upon which such complaint is framed.

Certain variances as to time and place, between information and evidence, not material.

22. In all cases of informations for offences or acts punishable upon summary conviction, any variance between the information and the evidence adduced in support thereof as to the time at which such offence or act is alleged to have been committed, shall not be deemed material, if it be proved that such information was in fact laid within the time limited by law for laying the same; and any variance between the information and the evidence adduced in support thereof as to the place in which the offence or act is alleged to have been committed, shall not be deemed material, if the offence or act be proved to have been committed within the jurisdiction of the justice or justices by whom the information is heard and determined.

23. If any such variance or any other variance CHAP. 103. between the information and the evidence adduced in support thereof, appears to the justice or justices present and acting at the hearing to be such that the party charged by the information has been thereby deceived or misled, the justice or justices, upon such terms as he or they think fit, may adjourn the hearing of the case to some future day, and in the meantime commit (D) the defendant to the common gaol or other prison, or to such other custody as the justice or justices think fit, or may discharge him upon his entering into a recognizance (E), with or without surety or sureties, at the discretion of the justice or justices, conditioned for his appearance at the time and place to which the hearing is adjourned.

But if the defendant has been misled, justice may adjourn the case; and on what conditions.

24. In all cases where a defendant has been discharged upon recognizance as aforesaid, and does not afterwards appear at the time and place in the recognizance mentioned, the justice who took the recognizance, or any other justice or justices who may then be there present, having certified (F) upon the back of the recognizance the non-appearance of the defendant, may transmit the recognizance to the proper officer in the Province appointed by law to receive the same, to be proceeded upon in like manner as other recognizances, and the certificate shall be deemed sufficient *prima facie* evidence of the non-appearance of the defendant.

Defendant bailed and not appearing at proper time.

25. All complaints upon which a justice or justices of the peace are authorized by law to make an order, and all informations for any offence or act punishable upon summary conviction, unless some particular Act or law otherwise requires, and except in cases where it is in this Chapter otherwise provided, may respectively be made or laid without any oath or affirmation as to the truth thereof.

Complaints, etc., need not be on oath, unless specially so provided.

26. But in all cases of informations, where the justice or justices receiving the same thereupon issue his or their warrant in the first instance to apprehend the defendant, and in every case where the justice or justices issue his or their warrant in the first instance, the matter of the information shall be substantiated by the oath or affirmation of the informant, or by some witness or witnesses on his behalf, before the warrant shall be issued; and every complaint shall be for one matter of complaint only, and not for two or more matters of complaint, and every information shall be for one offence or act only, and not for two or more offences or acts, and every complaint or information may be laid or made by the complainant or informant in person, or by his counsel or attorney, or other person authorized in that behalf.

Except where warrant is issued in the first instance.

Complaint or information to be for one matter only; may be made by attorney.



## CHAP. 103.

When no time is limited for information or complaint.

As to the hearing of complaints and information.

If there be no direction in the Act.

To be deemed an open court.

Defendant may make full defence, and produce witnesses.

Prosecutor may be heard by counsel or attorney.

In case the defendant does not appear

Proceeding *ex parte*, or warrant and adjournment.

27. In all cases where no time is specially limited for making any complaint or laying any information in the Act or law relating to the particular case, the complaint shall be made and the information shall be laid within three months from the time when the matter of the complaint or information arose.

28. Every complaint and information shall be heard, tried, determined and adjudged by one justice or two or more justices of the peace, as may be directed by the Act or law upon which the complaint or information is framed, or by any other Act or law in that behalf.

29. If there be no such direction in any Act or law, then the complaint or information may be heard, tried, determined and adjudged by any one justice for the territorial division where the matter of the complaint or information arose.

30. The room or place in which the justice or justices sit to hear and try any complaint or information shall be deemed an open and public court, to which the public generally may have access, so far as the same can conveniently contain them.

31. The party against whom the complaint is made or information laid shall be admitted to make his full answer and defence thereto, and to give evidence and have the witnesses examined and cross-examined by counsel or attorney on his behalf.

32. Every complainant or informant in any such case shall be at liberty to conduct the complaint or information, and to have the witnesses examined and cross-examined by counsel or attorney on his behalf, provided that no such informant or complainant to whom any portion of the penalty or fine is by law made payable, shall be competent to give evidence on the trial of the information or complaint, unless before being sworn he shall in open court renounce all claim to such fine or penalty, in which case no part thereof if recovered shall be paid to said informant or complainant.

33. If on the day and at the place appointed by the summons for hearing and determining the complaint or information, the defendant against whom the same has been made or laid does not appear when called, the constable or other person who served him with the summons shall declare upon oath in what manner he served the summons; and if it appear to the satisfaction of the justice or justices that he duly served the summons, then the justice or justices may proceed to hear and determine the case in the absence of the defendant, or the justice or justices, upon the non-appearance of the defendant, may, if

he or they think fit, issue his or their warrant in manner CHAP. 103, hereinbefore directed, and shall adjourn the hearing of the complaint or information until the defendant is apprehended.

34. When the defendant has been apprehended under the warrant, he shall be brought before the same justice or justices or some other justice or justices of the peace for the same territorial division, who shall thereupon either by his or their warrant (H) commit the defendant to the common gaol or other prison, or if he or they think fit verbally to the custody of the constable or other person who apprehended him, or to such other safe custody as he or they deem fit, and may order the defendant to be brought up at a certain time and place before him or them, of which order the complainant or informant shall have due notice, but no committal under this section shall be for more than one week. When defendant has been apprehended, etc. Proviso.

35. If upon the day and at the place so appointed, the defendant appears voluntarily in obedience to the summons in that behalf served upon him, or is brought before the justice or justices by virtue of a warrant, then if the complainant or informant, having had due notice, does not appear by himself, his counsel or attorney, the justice or justices shall dismiss the complaint or information, unless for some reason he or they think proper to adjourn the hearing of the same until some other day, upon such terms as he or they think fit, in which case the justice or justices may commit (D) the defendant in the meantime to the common gaol or other prison, or to such other custody as he or they think fit, or may discharge him upon his entering into a recognizance (E) with or without surety or sureties, at the discretion of the justice or justices, conditioned for his appearance at the time and place to which such hearing may be adjourned. If defendant appears, &c., and the complainant does not; discharge or adjournment on recognizance.

36. If the defendant does not afterwards appear at the time and place mentioned in his recognizance, then the justice who took the recognizance, or any justice or justices then and there present, having certified (F) on the back of the recognizance the non-appearance of the defendant, may transmit the recognizance to the proper officer appointed to receive the same, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of the non-appearance of the defendant. If defendant afterwards fails to appear, etc.

37. If both parties appear, either personally or by their respective counsel or attorneys, before the justice or justices who are to hear and determine the complaint or If both parties appear.

**CHAP. 103.** information, then the said justice or justices shall proceed to hear and determine the same.

Proceedings on the hearing.

38. In case the defendant be present at the hearing, the substance of the information or complaint shall be stated to him, and he shall be asked if he has any cause to shew why he should not be convicted, or why an order should not be made against him, as the case may be.

Justice may convict, &c., if defendant admits the truth.

39. If he thereupon admits the truth of the information or complaint, and shews no sufficient cause why he should not be convicted, or why an order should not be made against him, as the case may be, the justice or justices present at the hearing shall convict him or make an order against him accordingly.

If he does not admit the truth, &c., examination of witnesses, &c.

40. If he does not admit the truth of the information or complaint, the justice or justices shall proceed to hear the prosecutor or complainant and such witnesses as he may examine, and such other evidence as he may adduce in support of his information or complaint, and shall also hear the defendant and such witnesses as he may examine, and such other evidence as he may adduce in his defence, and also hear such other witnesses as the prosecutor or complainant may examine in reply, if such defendant has examined any witnesses or given any evidence other than as to his (the defendant's) general character.

As to observations by either party.

41. The prosecutor or complainant shall not be entitled to make any observations in reply upon the evidence given by the defendant, nor shall the defendant be entitled to make any observations in reply upon the evidence given by the prosecutor or complainant in reply.

Decision of the case.

42. The justice or justices, having heard what each party has to say, and the witnesses and evidence adduced, shall consider the whole matter, and unless otherwise provided determine the same, and convict or make an order upon the defendant, or dismiss the information or complaint, as the case may be.

Minute of conviction to be made.

43. If he or they convict or make an order against the defendant, a minute or memorandum thereof shall then be made, for which no fee shall be paid, and the conviction (I 1, 2, 3) or order (K 1, 2, 3) shall afterwards be drawn up by the justice or justices in proper form, under his or their hand and seal or hands and seals.

Certificate if he dismiss the complaint, &c.

44. If the justice or justices dismiss the information or complaint, he or they may, when required so to do, make an order of dismissal of the same (L) and shall give the defendant a certificate thereof (M), which certificate upon being afterwards produced shall without further proof be a bar to any subsequent information or complaint for the same matter against the same party.

45. If the information or complaint in any case CHAP. 103. negatives any exemption, exception, proviso, or condition in the statute on which the same is framed, it shall not be necessary for the prosecutor or complainant to prove such negative, but the defendant may prove the affirmative thereof in his defence, if he would have advantage of the same.

If information or complaint negatives any exemption, &c.

46. Every prosecutor of any information not having any pecuniary interest in the result, and every complainant in any complaint, whatever his interest may be in the result of the same, shall be a competent witness to support such information or complaint; and every witness at any hearing shall be examined upon oath or affirmation, and the justice or justices before whom any witness appears for the purpose of being examined shall have full power and authority to administer to every witness the usual oath or affirmation: provided that no prosecutor shall be deemed incompetent as a witness on the ground only that he may be liable to costs.

Prosecutors and complainants in certain cases to be competent witnesses, and examined upon oath, &c.

Proviso.

47. Before or during the hearing of any information or complaint, any one justice or the justices present may in his or their discretion adjourn the hearing of the same to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties, or of their respective attorneys or agents then present, and in the meantime the justice or justices may suffer the defendant to go at large or may commit (D) him to the common gaol or other prison, within the territorial division for which the justice or justices are then acting, or to such other safe custody as the justice or justices think fit, or may discharge the defendant upon his recognizance (E), with or without sureties at the discretion of the justice or justices, conditioned for his appearance at the time and place to which such hearing or further hearing is adjourned, but no such adjournment shall be for more than one week.

Justice may adjourn hearing of any case and commit defendant or suffer him to go at large on recognizance.

Proviso.

48. If at the time and place to which the hearing or further hearing has been adjourned, either or both of the parties do not appear personally or by his or their counsel or attorneys respectively, before the justice or justices or such other justice or justices as may then be there, the justice or justices then there present may proceed to the hearing or further hearing as if the party or parties were present.

If defendant or prosecutor do not appear, the case may nevertheless be heard.

49. If the prosecutor or complainant do not appear the justice or justices may dismiss the information with or without costs, as to him or them seems fit.

If the prosecutor does not appear.

**CHAP. 103.** 50. In all cases when a defendant is discharged upon his recognizance, and does not afterwards appear at the time and place mentioned in the recognizance, the justice or justices who took the recognizance, or any other justice or justices who may then be there present, having certified (F) on the back of the recognizance the non-appearance of the accused party, may transmit such recognizance to the proper officer appointed to receive the same by the laws of the Province, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of the non-appearance of the defendant.

Form of convictions may be as in schedule where no form is given in any future Statute. 51. In all cases of conviction where no particular form of conviction is given by the Act or law creating the offence or regulating the prosecution for the same, and in all cases of conviction upon Acts or laws hitherto passed, whether any particular form of conviction has been therein given or not, the justice or justices who convict may draw up his or their conviction on parchment or on paper in such one of the forms of conviction (I 1, 2, 3) as may be applicable to the case, or to the like effect.

By-law of any municipality or incorporated town need not be set out in conviction. (1.) Where a conviction is made under or in pursuance of any by-law of any municipality or incorporated town, it shall not be necessary in the conviction, warrant or other process to set out the by-law under which such conviction is made, but the offence or act punishable under such by-law and for which such conviction is made shall be clearly stated.

Where no special form of order is so given, form in schedule may be adopted. 52. In case an order be made, and no particular form of order is given by the Act or law giving authority to make such order, and in all cases of orders made under the authority of any Acts or laws hitherto passed, whether any particular form of order is therein given or not, the justice or justices by whom the order is made may draw up the same in such one of the forms of orders (K 1, 2, 3) as may be applicable to the case, or to the like effect.

Defendant to be served with copy of the minute before distress or commitment. 53. In all cases when by any Act or law authority is given to commit a person to prison, or to levy any sum upon his goods or chattels by distress, for not obeying an order of a justice or justices, the defendant shall be served with a copy of the minute of the order before any warrant of commitment or of distress is issued in that behalf, and the order or minute shall not form any part of the warrant of commitment or of distress.

Justices may award costs not inconsistent with the fees established by law. 54. In all cases of summary conviction or of orders made by a justice or justices of the peace, the justice or justices making the same may in his or their discretion award and order in and by the conviction or order that the

defendant shall pay to the prosecutor or complainant such costs as to the said justice or justices seem reasonable in that behalf, and not inconsistent with the fees established by law to be taken on proceedings had by and before justices of the peace. CHAP. 103.

55. In cases where the justice or justices instead of convicting or making an order dismiss the information or complaint, he or they in his or their discretion may, in and by his or their order of dismissal, award and order that the prosecutor or complainant shall pay to the defendant such costs as to the said justice or justices seem reasonable and consistent with law. Costs may be awarded to defendant when the case is dismissed.

56. The sums so allowed for costs shall in all cases be specified in the conviction or order, or order of dismissal, and the same shall be recoverable in the same manner and under the same warrants as any penalty adjudged to be paid by the conviction or order is to be recovered. Costs so allowed shall be specified.

57. In cases where there is no such penalty to be recovered, such costs shall be recoverable by distress and sale of the goods and chattels of the party, and in default of distress by imprisonment with or without hard labor for any time not exceeding one month, unless the costs be sooner paid. And may be recovered by distress.

58. Where a conviction adjudges a pecuniary penalty or compensation to be paid, or where an order requires the payment of a sum of money, and by the Act or law authorizing such conviction or order the penalty, compensation or sum of money is to be levied upon the goods and chattels of the defendant by distress and sale thereof; and also in cases where by the Act or law in that behalf no mode of raising or levying the penalty, compensation or sum of money, or of enforcing the payment of the same, is stated or provided, the justice or any one of the justices making such conviction or order, or any justice of the peace for the same territorial division, may issue his warrant of distress (N 1, 2) for the purpose of levying the same, which warrant of distress shall be in writing under the hand and seal of the justice making the same. Justices may issue warrant of distress in cases where a pecuniary penalty, &c., has been adjudged.

59. If after delivery of the warrant of distress to the constable or constables to whom the same has been directed to be executed, sufficient distress cannot be found within the limits of the jurisdiction of the justice granting the warrant, then upon proof being made upon oath or affirmation of the handwriting of the justice granting the warrant before any justice of any other territorial division, such justice shall thereupon make an endorsement (N 3) on the warrant, signed with his hand, authorizing the execution of the warrant within the limits of his jurisdiction, In certain cases warrant may be backed for execution in another jurisdiction.

CHAP. 103. by virtue of which warrant and endorsement the penalty or sum and costs, or so much thereof as may not have been before levied or paid, shall be levied by the person bringing the warrant, or by the person or persons to whom the warrant was originally directed, or by any constable or other peace officer of the last mentioned territorial division, by distress and sale of the goods and chattels of the defendant therein.

When the issuing of a warrant would be ruinous to defendant, or there are no goods, justice may commit him.

60. Whenever it appears to any justice of the peace to whom application is made for any warrant of distress that the issuing thereof would be ruinous to the defendant and his family, or whenever it appears to the justice, by the confession of the defendant or otherwise, that he hath no goods and chattels whereon to levy such distress, then the justice, if he deems it fit, instead of issuing a warrant of distress may (O 1, 2) commit the defendant to the common gaol or other prison in the territorial division, there to be imprisoned with or without hard labor for the time and in the manner the defendant could by law be committed in case such warrant of distress had issued, and no goods or chattels had been found whereon to levy the penalty or sum and costs.

When distress is issued, defendant may be bailed or detained until it is returned.

61. In all such cases where a justice of the peace issues any warrant of distress he may suffer the defendant to go at large, or verbally or by a written warrant in that behalf, may order the defendant to be kept and detained in safe custody until return has been made to the warrant of distress, unless the defendant gives sufficient security, by recognizance or otherwise, to the satisfaction of the justice, for his appearance before him at the time and place appointed for the return of the warrant of distress, or before such other justice or justices for the same territorial division as may then be there.

If defendant does not afterwards appear, the recognizance to be certified and transmitted to the proper officer.

62. In all such cases where a defendant gives security by recognizance, and does not afterwards appear at the time and place in the said recognizance mentioned, the justice who hath the same, or any justice or justices who may then be there present, upon certifying (F) on the back of the recognizance the non-appearance of the defendant, may transmit the recognizance to the proper officer appointed by law to receive the same, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of the non-appearance of the defendant.

In default of sufficient distress, justice may commit defendant to prison.

63. If at the time and place appointed for the return of any warrant of distress, the constable who has had the execution of the same, returns (N 4) that he could find no goods or chattels whereon he could levy the sum or

sums therein mentioned, together with the costs of or CHAP. 103.  
 occasioned by the levy of the same, the justice of the peace before whom the same is returned may issue his warrant of commitment (N 5) directed to the same or any other constable, reciting the conviction or order shortly, the issuing of the warrant of distress, and the return thereto, and requiring the constable to convey the defendant to the common gaol or other prison of the territorial division for which the justice is then acting, and there to deliver him to the keeper thereof, and requiring the keeper to receive the defendant into such gaol or prison and there to imprison him, or to imprison him and keep him to hard labor in the manner and for the time directed by the Act or law on which the conviction or order mentioned in the warrant of distress is founded, unless the sum or sums adjudged to be paid, and all costs and charges of the distress, and also the costs and charges of the commitment and conveying of the defendant to prison, if such justice thinks fit so to order (the amount thereof being ascertained and stated in such commitment), be sooner paid; but if no Proviso.  
 term of imprisonment be specified in the Act or law, the Term limited.  
 period for which the justice shall order the defendant to be so imprisoned shall not exceed three months.

64. Where a justice or justices of the peace upon any information or complaint adjudges or adjudge the defendant to be imprisoned, and the defendant is then in prison undergoing imprisonment upon conviction for any other offence or act, the warrant of commitment for the subsequent offence shall be forthwith delivered to the gaoler or other officer to whom it is directed, and the justice or justices who issued the same if he or they think fit may award and order therein that the imprisonment for the subsequent offence shall commence at the expiration of the imprisonment to which the defendant was previously sentenced. Imprisonment for a subsequent offence to commence at expiration of that for a previous offence.

65. When any information or complaint is dismissed with costs, the sum awarded for costs in the order for dismissal may be levied by distress (Q 1) on the goods and chattels of the prosecutor or complainant in the manner aforesaid; and in default of distress or payment the prosecutor or complainant may be committed (Q 2) to the common gaol or other prison in manner aforesaid for any time not exceeding one month, unless such sum and all costs and charges of the distress, and of the commitment and conveying of the prosecutor or complainant to prison (the amount thereof being ascertained and stated in the commitment), be sooner paid. If information be dismissed, costs may be recovered by distress on prosecutor.



**CHAP. 103.** 66. Unless it be otherwise provided in any special Act under which a conviction takes place or an order is made by a justice or justices of the peace, any person who thinks himself aggrieved by any such conviction or order may appeal to the County Court of the district where the cause of the information or complaint arose. Every right of appeal shall unless it be otherwise provided in any special Act be subject to the conditions following :

Appeal to next term.

(1.) If the conviction or order be made more than twelve days before the next ensuing term of the court to which the appeal is given, such appeal shall be made to the then next term of the court; but if the conviction or order be made within twelve days of the term of such court next ensuing, then to the second term next after such conviction or order.

Appeal to second next term.

Notice of appeal.

(2.) The person aggrieved shall give to the prosecutor or complainant, or to the convicting justice or one of the convicting justices for him, a notice in writing of such appeal within four days after such conviction or order.

Person aggrieved to remain in custody, or to give security by recognizance.

(3.) The person aggrieved shall either remain in custody until the holding of the court to which the appeal is given, or shall enter into a recognizance with two sufficient sureties, before a justice or justices of the peace, conditioned personally to appear at the said court, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall by the court be awarded, or if the appeal be against any conviction or order whereby only a penalty or sum of money is adjudged to be paid, the person aggrieved may (although the order direct imprisonment in default of payment) instead of remaining in custody as aforesaid, or giving such recognizance as aforesaid, deposit with the justice or justices convicting or making the order such sum of money as such justice or justices deem sufficient to cover the sum so adjudged to be paid, together with the costs of the conviction or order, and the costs of the appeal; and upon such recognizance being given or such deposit made the justice or justices before whom such recognizance is entered into or deposit made shall liberate such person if in custody.

Deposit of money in lieu of recognizance.

Proceedings in court of appeal.

(4.) And the court to which such appeal is made shall thereupon hear and determine the matter of appeal, and make such order therein, with or without costs to either party, including costs of the court below, as to the court seems meet; and in case of the dismissal of the appeal, or the affirmation of the conviction or order, shall order and adjudge the offender or person convicted to be punished according to the conviction, or the defendant to pay the amount adjudged by the said order, and to pay such costs

as may be awarded ; and shall if necessary issue process for enforcing the judgment of the court ; and in any case where after such deposit has been made as aforesaid the conviction or order is affirmed, the court may order the sum thereby adjudged to be paid, together with the costs of the conviction or order and the costs of the appeal, to be paid out of the money deposited, and the residue if any to be re-paid to the defendant ; and in any case where after any such deposit the conviction or order is quashed, the court shall order the money to be re-paid to the defendant, and the said court shall have power if necessary from time to time, by order endorsed on the conviction or order, to adjourn the hearing of the appeal from one term to another or others of the said court.

(5.) In every case where any conviction or order is quashed on appeal as aforesaid, the clerk of the court shall forthwith endorse on the conviction or order, a memorandum that the same has been quashed ; and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall when certified under the hand of the clerk of the court be sufficient evidence in all courts and for all purposes that the conviction or order has been quashed.

67. When an appeal has been lodged in due form and in compliance with the requirements of this Chapter, against any summary conviction or decision, the court appealed to may, at the request of either appellant or respondent, empanel a jury to try the facts of the case, and shall administer to such jury the following oath :—

“ You shall well and truly try the facts in dispute in the matter of A. B., (*the informant*) against C. D., (*the defendant*), and a true verdict give according to the evidence. So help you God.”

And the court on the finding of the jury shall give such judgment as the law requires ; and if a jury be not so demanded, the court shall try and be the absolute judges as well of the fact as of the law in respect to such conviction or decision ; and any of the parties to the appeal may call witnesses and adduce evidence who or which may not have been called or adduced at the original hearing.

68. No judgment shall be given in favor of the appellant if the appeal is based on an objection to any information, complaint or summons, or to any warrant to apprehend a defendant issued upon any such information, complaint or summons, for any alleged defect therein in substance or in form, or for any variance between such information, complaint, summons or warrant and the evidence adduced in support thereof at the hearing of such

CHAP. 103.

Endorsement of clerk when conviction or order quashed on appeal, sufficient evidence thereof in all courts.

Court appealed to may empanel a jury to try the case.

Oath of juror.

Judgment.

Provide as to evidencu.

Appeal not to be based on alleged defect in form or substance, unless the same was objected to before the justice, and he refused to adjourn the case, &c.

CHAP. 103. information or complaint,—unless it shall be proved before the court hearing the appeal that such objection was made before the justice or justices of the peace before whom the case was tried and by whom such conviction, judgment or decision was given,—nor unless it is proved that notwithstanding it was shewn to such justice or justices of the peace that by such variance the person summoned and appearing or apprehended, had been deceived or misled, such justice or justices refused to adjourn the hearing of the case to some further day, as provided by this Chapter.

Decision to be given on the merits, notwithstanding defect of form in conviction, which may be amended.

69. In all cases of appeal from any summary conviction or order had or made before any justice or justices of the peace, the court to which such appeal is made shall hear and determine the charge or complaint on which such conviction or order has been had or made, upon the merits, notwithstanding any defect of form or otherwise in such conviction or order; and if the person charged or complained against is found guilty the conviction or order shall be affirmed and the court shall amend the same if necessary, and any conviction or order so affirmed or affirmed and amended shall be enforced in the same manner as convictions or orders affirmed in appeal.

If appeal is abandoned, after notice given, costs to be recovered.

70. And for the more effective prevention of frivolous appeals, the court or judge to whom an appeal is made, upon proof of notice of the appeal to such court having been given to the person entitled to receive the same, though such appeal was not afterwards prosecuted or entered, may if such appeal has not been abandoned according to law, at the same court for which such notice was given, order to the party or parties receiving the same such costs and charges as by the said court or judge may be thought reasonable and just, to be paid by the party or parties giving such notice, such costs to be recoverable in the manner provided by this Chapter for the recovery of costs upon an appeal against an order or conviction.

Proceedings after appeal.

71. In case an appeal against any conviction or order be decided in favor of the respondents, the justice or justices who made the conviction or order, or any other justice of the peace for the same territorial division, may issue the warrant of distress or commitment for execution of the same, as if no appeal had been brought.

No *certiorari*, &c.

72. No conviction or order affirmed or affirmed and amended on appeal shall be quashed for want of form or be removed by *certiorari* into the Supreme or County Court; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted and there be a good and valid conviction to sustain the same.

73. Every justice of the peace before whom any person shall be summarily convicted of any act or offence by virtue of this Chapter, shall transmit the conviction to the County Court of the county where the cause of the information or complaint arose, before the time when an appeal from such conviction could be heard, there to be kept by the proper officer among the records of the court; and if such conviction has been appealed against, and a deposit of money made, shall return the deposit into the said court; and upon any information against any person for a subsequent act or offence, a copy of such conviction, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former act or offence, and the conviction shall be presumed to have been unappealed against until the contrary be shewn.

CHAP. 103.

Justice convicting to return the conviction.

And the deposit money, if any.

Certificate of conviction.

74. In all cases where it appears by the conviction that the defendant has appeared and pleaded and the merits have been tried, and that the defendant has not appealed against the conviction where an appeal is allowed, or if appealed against the conviction has been affirmed, such conviction shall not afterwards be set aside or vacated in consequence of any defect of form whatever, but the construction shall be such a fair and liberal construction as will be agreeable to the justice of the case.

Effect of conviction if no appeal.

75. If upon any appeal the court trying the appeal orders either party to pay costs, the order shall direct the costs to be paid to the clerk of the court, to be by him paid over to the party entitled to the same, and shall state within what time the costs shall be paid.

To whom costs to be payable.

76. If the same be not paid within the time so limited, and the party ordered to pay the same has not been bound by any recognizance conditioned to pay such costs, the clerk of the court or his deputy, on application of the party entitled to the costs or of any person on his behalf, and on payment of any fee to which he may be entitled, shall grant to the party so applying a certificate (R) that the costs have not been paid, and upon production of the certificate to any justice or justices of the peace for the same territorial division, he or they may enforce the payment of the costs by warrant of distress (S 1) in manner aforesaid, and in default of distress he or they may commit (S 2) the party against whom the warrant has issued in manner hereinbefore mentioned for any time not exceeding two months, unless the amount of the costs and all costs and charges of the distress and also the costs of the commitment and conveying of the party to prison, if the justice or justices think fit so to order (the amount

Enforcement of payment.

By distress or imprisonment.

CHAP. 103. thereof being ascertained and stated in the commitment),  
be sooner paid.

Justices to make returns to the council of all convictions and fines, &c.

77. Every justice of the peace shall make a return in writing under his hand of all convictions made by him to the next ensuing meeting of the municipal council for the district or county in which such conviction takes place, and of the receipt and application by him of the moneys received from the defendants (and in the case of any convictions before two or more justices, such justices, being present and joining therein, shall make a joint return thereof) in the following form:—

RETURN of Convictions made by me (*or, us, as the case may be*) in the month of \_\_\_\_\_, 18—.

Name of the Prosecutor.	Name of the Defendant.	Nature of the charge.	Date of Conviction.	Name of Convicting Justice.	Amount of penalty, fine or damage.	Time when paid or to be paid to said Justice.	To whom paid over by said Justice.	If not paid, why not, and general observations, if any.

A. B., Convicting Justice,

*or*

A. B. and C. D., Convicting Justices, (*as the case may be.*)

Return of subsequent receipts, &c.

78. And any justice or justices to whom any such moneys may be afterwards paid, shall make a return of the receipts and application thereof to the next meeting of the municipal council as aforesaid, which return shall be filed by the clerk of the municipality with the records of his office.

79. In case the justice or justices before whom any such conviction takes place or who receives any such moneys, neglect or refuse to make such return thereof, or in case any such justice or justices wilfully make a false, partial or incorrect return, or wilfully receive a larger amount of fees than by law they are authorized to receive, such justice or justices, so neglecting, or refusing, or wilfully making such false, partial or incorrect return, or wilfully receiving a larger amount of fees as aforesaid, shall forfeit and pay the sum of eighty dollars, together with full costs of suit, to be recovered by any person suing for the same by action of debt or information in any court of record in the Province in which such return ought to have been or is made,—one moiety whereof shall be paid to the party suing, and the other moiety into the hands of the Provincial Secretary to and for the public uses of the Province.

CHAP. 103.

Penalty on justices of the peace neglecting to comply with the provisions of this Chapter as to returns, &c.

80. All prosecutions for penalties arising under the provisions of the next preceding section shall be commenced within six months next after the cause of action accrues, and the same shall be tried in the district, county or place wherein such penalties have been incurred, and if a verdict or judgment passes for the defendant, or the plaintiff becomes non-suit, or discontinues the action after issue joined, or if upon demurrer or otherwise judgment be given against the plaintiff, the defendant shall recover his full costs of suit as between attorney and client, and shall have the like remedy for the same as any defendant hath by law in other cases.

Actions for such penalties limited to six months after cause.

81. The clerk of the municipality in which any such returns are made, shall within seven days after the adjournment of the next ensuing meeting of the council cause the said returns to be published in one public newspaper in the district or county, or if there be no such newspaper then in a newspaper of an adjoining district or county, and shall also fix up in the court house of the district or county and also in a conspicuous place in the office of such clerk for public inspection, a schedule of the returns so made by such justices; and the same shall continue to be so fixed up and exhibited until the end of the next ensuing meeting of such council, and for every schedule so made and exhibited by the said clerk he shall be allowed the expense of publication and such fee as may be fixed by the council.

Clerk of the council to publish and post up the returns so made.

82. The clerk of the municipality within twenty days after the end of each meeting of such council as aforesaid, shall transmit to the Provincial Secretary a true copy of all such returns made within his district or county.

Copy of returns to be sent to Provincial Secretary.

**CHAP. 103.** 83. Nothing in the six next preceding sections shall have the effect of preventing any person aggrieved from prosecuting by indictment a justice of the peace for any offence, the commission of which would subject him to indictment at the time of the coming into force of this Chapter.

In case of tender or payment of the amount of distress. 84. In all cases where a warrant of distress has issued against any person, and such person pays or tenders to the constable having the execution of the same the sum or sums in the warrant mentioned, together with the amount of the expenses of the distress up to the time of payment or tender, the constable shall cease to execute the same.

Payment may be made to the keeper of the prison. 85. In all cases in which any person is imprisoned for non-payment of any penalty or other sum, he may pay or cause to be paid to the keeper of the prison in which he is imprisoned the sum in the warrant of commitment mentioned, together with the amount of the costs, charges and expenses (if any) therein also mentioned, and the keeper shall receive the same, and shall thereupon discharge the person, if he be in his custody for no other matter.

In what cases one justice may act. 86. In all cases of summary proceedings before a justice or justices of the peace, upon any information or complaint, one justice may receive the information or complaint, and grant a summons or warrant thereon, and issue his summons or warrant to compel the attendance of any witnesses for either party, and do all other acts and matters necessary preliminary to the hearing, even in cases where by the statute in that behalf the information or complaint must be heard and determined by two or more justices.

After hearing, &c. 87. After a case has been heard and determined one justice may issue all warrants of distress or commitment thereon.

Proceedings after judgment. 88. It shall not be necessary that the justice who acts before or after the hearing be the justice or one of the justices by whom the case is or was heard and determined.

In case two justices are required. 89. In all cases where by any Act or law it is required that an information or complaint shall be heard and determined by two or more justices, or that a conviction or order shall be made by two or more justices, such justices must be present and acting together during the whole of the hearing and determination of the case.

Amount to be paid to party aggrieved, limited. 90. When several persons join in the commission of the same act or offence, and upon conviction thereof each is adjudged to forfeit a sum equivalent to the value of the

property or to the amount of the injury done, no further sum shall be paid to the party aggrieved than the amount forfeited by one of such persons only, and the corresponding sum, forfeited by the other person, shall be applied in the same manner as other penalties imposed by a justice or justices of the peace are directed to be applied. CHAP. 103.

91. The evidence of the party aggrieved, and also the evidence of any inhabitant of the district, county or place in which any act or offence has been done or committed, shall be admitted in proof of the act or offence, notwithstanding that any forfeiture or penalty incurred by the offence may be payable to any public fund of such district, county or place. Party aggrieved and certain others may be witnesses.

92. Any one recorder, police magistrate, or stipendiary magistrate, appointed for any district, county, city, town, or place, and sitting at a police court or other place appointed in that behalf, shall have full power to do alone whatever is authorized by this Chapter to be done by two or more justices of the peace; and the several forms hereinafter contained may be varied so far as it may be necessary to render them applicable to police courts or to the court or other place of sitting of such functionary as aforesaid. Certain magistrates to have the powers of two justices.

93. Any recorder, or police magistrate, or stipendiary magistrate, sitting at any police court or other place appointed in that behalf, shall have such and like powers and authority to preserve order in the said courts during the holding thereof, and by the like ways and means as now by law are or may be exercised and used in like cases and for the like purposes by any courts of law in Nova Scotia, or by the judges thereof respectively, during the sittings thereof. Power to preserve order, &c.

94. Any recorder, police magistrate, or stipendiary magistrate, in all cases where any resistance is offered to the execution of any summons, warrant of execution or other process issued by him, may enforce the due execution of the same by the means provided by the law for enforcing the execution of the process of other courts in like cases. Power to punish resistance to process, &c.

95. The expression "territorial division" whenever used in this Chapter, shall mean district, county, municipality, township, city, town or other judicial division or place to which the context may apply; and the words "district or county" shall include any territorial or judicial division or place in and for which there is such justice, justice's court, officer or prison, as is mentioned in the context and to which the context may apply. Interpretation of certain words.



CHAP. 103. 96. The words "common gaol" or "prison," whenever  
 The same. they occur in this Chapter, shall be held to mean any place  
 other than a penitentiary where parties charged with  
 offences against the law are usually kept and detained in  
 custody.

Forms. 97. The several forms in the schedule to this Chapter  
 contained, varied to suit the case or forms, to the like effect,  
 shall be deemed good, valid and sufficient in law.

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SCHEDULE.

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(A.) See s. 3.

SUMMONS TO THE DEFENDANT UPON AN INFORMATION OR  
 COMPLAINT.

Canada, )  
 Province of \_\_\_\_\_, )  
 District (or County, )  
 or as the case may )  
 be,) of \_\_\_\_\_.

To A. B., of \_\_\_\_\_, (laborer):

Whereas information hath this day been laid (or,  
 complaint hath this day been made) before the undersigned,  
 (one) of Her Majesty's Justices of the Peace in and for the  
 said District (or, County, City, Town, &c., as the case may be,)  
 of \_\_\_\_\_, for that you (here state shortly the matter of  
 the information or complaint) : These are therefore to  
 command you, in Her Majesty's name, to be and appear on  
 \_\_\_\_\_, at \_\_\_\_\_ o'clock in the (fore) noon, at \_\_\_\_\_, before  
 me or such Justice or Justices of the Peace for the  
 said District (or County, or as the case may be.) as may  
 then be there, to answer to the said information (or  
 complaint), and to be further dealt with according to law.

Given under my hand and seal, this \_\_\_\_\_ day of  
 \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the  
 District (or County, or as the case may be) aforesaid.

J. S. [L. s.]

(B.) See s. 8.

## WARRANT WHEN THE SUMMONS IS DISOBEYED.

Canada,  
 Province of \_\_\_\_\_,  
 District (or County,  
 or as the case may  
 be,) of \_\_\_\_\_.

To all or any of the Constables or other Peace Officers in the district (or county, or as the case may be) of \_\_\_\_\_.

Whereas on \_\_\_\_\_ last past, information was laid (or complaint was made) before \_\_\_\_\_, (one) of Her Majesty's Justices of the Peace in and for the said District (or County, or as the case may be,) of \_\_\_\_\_, for that A. B., (&c., as in the summons): And whereas (I), the said Justice of the Peace, then issued (my) summons unto the said A. B., commanding him, in Her Majesty's name, to be and appear on \_\_\_\_\_, at \_\_\_\_\_ o'clock in the (fore) noon, at \_\_\_\_\_, before (me) or such Justice or Justices of the peace as might then be there, to answer unto the said information (or complaint), and to be further dealt with according to law: And whereas the said A. B. hath neglected to be and appear at the time and place so appointed in and by the said summons, although it hath now been proved to me upon oath that the said summons hath been duly served upon the said A. B.: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B. and to bring him before (me) or some one or more of Her Majesty's Justices of the Peace in and for the said District (or County, or, as the case may be,) to answer to the said information (or complaint); and to be further dealt with according to law.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the District (or County, or, as the case may be,) aforesaid.

J. S. [L. S.]

CHAP. 103.(C.) *See* s. 8.

## WARRANT IN THE FIRST INSTANCE.

Canada,  
 Province of \_\_\_\_\_,  
 District (or County,  
 or as the case may  
 be,) of \_\_\_\_\_.

To all or any of the Constables or other Peace Officers in the said District (or, County, or, as the case may be,) of \_\_\_\_\_.

Whereas information hath this day been laid before the undersigned, (one) of Her Majesty's Justices of the Peace in and for the said District (or, County, or as the case may be,) of \_\_\_\_\_, for that A. B. (*here state shortly the matter of information*); and oath being now made before me substantiating the matter of such information, and that the said A. B. is about to leave the Province and may escape punishment: These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B. and to bring him before (me) or some one or more of Her Majesty's Justices of the Peace in and for the said District (or county, or as the case may be,) to answer to the said information, and to be further dealt with according to law.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the District (County, &c., as the case may be) aforesaid.

J. S. [L. S.]

(D.) *See* ss. 14, 23, 35, 47.WARRANT OF COMMITTAL FOR SAFE CUSTODY DURING AN  
ADJOURNMENT OF THE HEARING.

Canada,  
 Province of \_\_\_\_\_,  
 District (or County,  
 or as the case may  
 be,) of \_\_\_\_\_.

To all or any of the Constables or Peace Officers in the District (or County, or as the case may be,) of \_\_\_\_\_, and to the Keeper of the Common Gaol (or Lock-up house) at \_\_\_\_\_

Whereas on \_\_\_\_\_ last past, information was laid (or complaint made) before \_\_\_\_\_, (one) of Her Majesty's

Justices of the Peace in and for the said District (*or County*, CHAP. 103  
*or, as the case may be,*) of ———, for that (&c., *as in the summons:*) And whereas the hearing of the same is adjourned to the ——— of ——— (*instant*), at ——— o'clock in the (*fore*) noon, at ———, and it is necessary that the said A. B. should in the meantime be kept in safe custody: These are therefore to command you, or any one of the said Constables or Peace Officers, in Her Majesty's name, forthwith to convey the said A. B. to the Common Gaol (*or Lock-up House*) at ———, and there deliver him into the custody of the Keeper thereof, together with this Precept; and I hereby require you, the said Keeper, to receive the said A. B. into your custody in the said Common Gaol (*or Lock-up House*), and there safely keep him until the ——— day of ———, (*instant*), when you are hereby required to convey and have him, the said A. B., at the time and place to which the said hearing is so adjourned as aforesaid, before such Justices of the Peace for the said District (*or County, or, as the case may be,*) as may then be there to answer further to the said information (*or complaint*), and to be further dealt with according to law.

Given under my hand and seal this ——— day of ———, in the year of our Lord ———, at ———, in the District (*or County, &c., as the case may be,*) aforesaid.

J. S. [L. S.]

(E.) See ss. 14, 23, 35, 47.

RECOGNIZANCE FOR THE APPEARANCE OF THE DEFENDANT  
 WHEN THE CASE IS ADJOURNED, OR NOT AT ONCE  
 PROCEEDED WITH.

Canada,  
 Province of ———,  
 District (*or County,*  
*or, as the case may*  
*be,*) of ———.

Be it remembered, That on ———, A. B., of ———, (*laborer*), and L. M., of ———, (*grocer*), and O. P., of ———, (*yeoman*), personally came and appeared before the undersigned, (one) of Her Majesty's Justices of the Peace in and for the said District (*or County, or as the case may be,*) of ———, and severally acknowledged themselves to owe to our Sovereign Lady the Queen the several sums following, that is to say: the said A. B. the sum of ———, and the said L. M. and O. P. the sum of ———, each, of good and lawful current money of Canada, to be

CHAP. 103. made and levied of their several goods and chattels, lands and tenements respectively to the use of our said Lady the Queen, her Heirs and Successors, if he the said A. B. shall fail in the condition endorsed (or hereunder written).

Taken and acknowledged the day and year first above mentioned at ———, before me.

J. S. [L. S.]

The condition of the within (or the above) written recognizance is such that if the said A. B. shall personally appear on the ——— day of ———, (*instant*), at ——— o'clock in the (*fore*) noon, at ———, before me or such Justices of the Peace for the said District (or County, or, as the case may be,) as may then be there, to answer further to the information (or complaint) of C. D. exhibited against the said A. B. and to be further dealt with according to law, then the said recognizance to be void, or else to stand in full force and virtue.

NOTICE OF SUCH RECOGNIZANCE TO BE GIVEN TO THE  
DEFENDANT AND HIS SURETIES.

Take notice that you, A. B., are bound in the sum of ———, and you, L. M. and O. P., in the sum of ———, each, that you, A. B., appear personally on ———, at ——— o'clock in the (*fore*) noon at ———, before me or such Justices of the Peace for the District (or County, or, as the case may be,) of ——— as shall then be there, to answer further to a certain information (or complaint) of C. D., the further hearing of which was adjourned to the said time and place, and unless you appear accordingly, the recognizance entered into by you, A. B., and by L. M. and O. P., as your sureties, will forthwith be levied on you and them.

Dated this ——— day of ———, one thousand eight hundred and ———.

J. S. [L. S.]

(F.) See ss. 15, 24, 36, 50, 62.

CERTIFICATE OF NON-APPEARANCE TO BE ENDORSED ON  
THE DEFENDANT'S RECOGNIZANCE.

I hereby certify that the said A. B. hath not appeared at the time and place in the said condition mentioned, but therein hath made default, by reason whereof the within written recognizance is forfeited.

J. S. [L. S.]

(G. 1.) See s. 17.

SUMMONS TO A WITNESS.

Canada,  
Province of \_\_\_\_\_,  
District (or, County,  
or, as the case may  
be,) of \_\_\_\_\_

To E. F., of \_\_\_\_\_, in the said District (or, County, or, as  
the case may be,) of \_\_\_\_\_:

Whereas information was laid (or, complaint was made)  
before \_\_\_\_\_, (one) of Her Majesty's Justices of the Peace  
in and for the said District (or, County, or, as the case may  
be,) of \_\_\_\_\_, for that (&c., as in the summons,) and it  
hath been made to appear to me upon (oath) that you are  
likely to give material evidence on behalf of the prosecutor  
(or complainant or defendant) in this behalf: These are  
therefore to require you to be and appear on \_\_\_\_\_, at  
\_\_\_\_\_ o'clock in the (fore) noon, \_\_\_\_\_ at \_\_\_\_\_ before  
me or such Justice or Justices of the Peace for the said  
District (or, County, or, as the case may be,) as may then  
be there, to testify what you shall know concerning the  
matter of the said information (or, complaint.)

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_,  
in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_ in the District  
(or, County, or, as the case may be,) aforesaid.

J. S. [L. S.]

(G. 2.) See s. 18.

WARRANT WHERE A WITNESS HAS NOT OBEYED A SUMMONS.

Canada,  
Province of \_\_\_\_\_,  
District (or, County,  
or, as the case may  
be,) of \_\_\_\_\_

To all or any of the Constables and other Peace Officers in the  
said District (or, County, or as the case may be,) of \_\_\_\_\_:

Whereas information was laid (or, complaint was made)  
before \_\_\_\_\_, (one) of Her Majesty's Justices of the Peace,  
in and for the said District (or, County, or, as the case may  
be,) of \_\_\_\_\_, for that (&c., as in the summons,) and it  
having been made to appear to (me) upon oath that E. F.,  
of \_\_\_\_\_, in the said District (or, County, as the case may

CHAP. 103. *be.*) (*laborer.*) was likely to give material evidence on behalf of the (prosecutor *or, as the case may be.*) (*I*) did duly issue (*my*) summons to the said E. F., requiring him to be and appear on ———, at ——— o'clock in the (*fore*) noon of the same day, at ———, before me or such Justice or Justices of the Peace for the said District (*or, County, or, as the case may be.*) as might then be there, to testify what he should know concerning the said A. B. or the matter of the said information (*or, complaint*); And whereas proof hath this day been made before me, upon oath, of such summons having been duly served upon the said E. F.; And whereas the said E. F. hath neglected to appear at the time and place appointed by the said Summons, and no just excuse has been offered for such neglect; These are therefore to command you to take the said E. F., and to bring and have him on ———, at ——— o'clock in the ——— noon, at ———, before me or such Justice or Justices of the Peace for the District (*or, County, or, as the case may be.*) as may then be there, to testify what he shall know concerning the said information (*or, complaint*).

Given under my hand and seal, this ——— day of ———, in the year of our Lord ———, at ——— in the District (*or, County, or, as the case may be.*) aforesaid.

J. S. [L. s.]

(G. 3.) See s. 19.

WARRANT FOR A WITNESS IN THE FIRST INSTANCE.

Canada, )  
Province of ———, )  
District (*or, County,* )  
*or, as the case may* )  
*be.*) of ———.

To all or any of the Constables or other Peace Officers in the said District (*or, County, or, as the case may be.*) of ———

Whereas information was laid (*or, complaint was made*) before the undersigned (*one*) of Her Majesty's Justices of the Peace, in and for the said District (*or, County, or, as the case may be.*) of ———, for that (&c., *as in the summons.*) and it being made to appear before me upon oath, that E. F., of ———, (*laborer.*) is likely to give material evidence on behalf of the (prosecutor, *or, as the case may be.*) in this matter, and it is probable that the said E. F., will not attend to give evidence without being compelled so to do; These are therefore to command you to bring and have the said E. F., on ———, at ——— o'clock in the

(*fore*) noon, at \_\_\_\_\_, before me or such other Justice or CHAP. 103.  
 Justices of the Peace, for the District (*or, County, or, as the*  
*case may be,*) as may then be there, to testify what he  
 shall know concerning the matter of the said information  
 (*or, complaint*).

Given under (*my*) hand and seal, this \_\_\_\_\_ day of  
 \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the  
 District (*or, County, or, as the case may be,*) aforesaid.

J. S. [L. s.]

(G. 4.) See s. 20.

COMMITMENT OF A WITNESS FOR REFUSING TO BE SWORN  
 OR GIVE EVIDENCE.

Canada,  
 Province of \_\_\_\_\_,  
 District (*or, County,*  
*or, as the case may*  
*be,*) of \_\_\_\_\_.

To all or any of the Constables or other Peace Officers in  
 the said District (*or, County, or, as the case may be,*) of  
 \_\_\_\_\_, and to the Keeper of the Common Gaol of the said  
 District (*or, County, or, as the case may be,*) at \_\_\_\_\_:

Whereas information was laid (*or, complaint* was made)  
 before (*me*) \_\_\_\_\_, (*one*) of Her Majesty's Justices of the  
 Peace, in and for the said District (*or, County, or, as the*  
*case may be,*) of \_\_\_\_\_, for that (&c., *as in the summons,*)  
 and one E. F., now appearing before me, such Justice as  
 aforesaid, on \_\_\_\_\_, at \_\_\_\_\_, and being required by me to  
 make oath (*or, affirmation*) as a witness in that behalf, hath  
 now refused so to do, (*or, being* now here duly sworn as a  
 witness in the matter of the said information *or* complaint,) doth  
 refuse to answer a certain question concerning the  
 premises which is now here put to him, and more  
 particularly the following question (*here insert the exact*  
*words of the question,*) without offering any just excuse for  
 such his refusal: These are therefore to command you or  
 any one of the said Constables or Peace Officers to take the  
 said E. F., and him safely to convey to the Common Gaol at  
 \_\_\_\_\_ aforesaid, and there to deliver him to the said  
 Keeper thereof, together with this Precept; And I do  
 hereby command you, the said Keeper of the said Common  
 Gaol, to receive the said E. F. into your custody in the  
 said Common Gaol and there imprison him for such his  
 contempt for the space of \_\_\_\_\_ days, unless he shall in the  
 meantime consent to be examined and to answer concerning



CHAP. 103. the premises, and for so doing this shall be your sufficient warrant.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the District (or, County, or, as *the case may be*,) aforesaid.

J. S. [L. s.]

(H.) See s. 34.

WARRANT TO REMAND A DEFENDANT WHEN APPREHENDED.

Canada, }  
Province of —, }  
District (or County, }  
or, as *the case may }  
be*, of —.

To all or any of the Constables, or other Peace Officers in the said District (or County, or, as *the case may be*), of —, and to the Keeper of the Common Gaol (or Lock-up House), at —.

Whereas information was laid (or complaint was made) before —, (one) of Her Majesty's Justices of the Peace in and for the District (or County, or, as *the case may be*), of —, for that (&c., as in the summons or warrant); and whereas the said A. B. hath been apprehended under and by virtue of a warrant, upon such information (or complaint) and is now brought before me as such Justice as aforesaid: These are therefore to command you, or any one of the said Constables or Peace Officers, in Her Majesty's name, forthwith to convey the said A. B. to the Common Gaol (or Lock-up House) at —, and there to deliver him to the said Keeper thereof, together with this Precept: And I do hereby command you, the said Keeper, to receive the said A. B. into your custody in the said Common Gaol (or Lock-up House), and there safely keep him until — next, the — day of —, (*instant*), when you are hereby commanded to convey and have him at —, at — o'clock in the — noon of the same day, before me, or such Justice or Justices of the Peace of the said District (or County, or, as *the case may be*), as may then be there to answer to the said information (or complaint), and to be further dealt with according to law.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the District (or County, or, as *the case may be*,) aforesaid.

J. S. [L. s.]

(I. 1.) See ss. 43, 51.

CONVICTION FOR A PENALTY TO BE LEVIED BY DISTRESS,  
AND IN DEFAULT OF SUFFICIENT DISTRESS, BY  
IMPRISONMENT.

Canada, }  
Province of \_\_\_\_\_ }  
District (or County, }  
or, as the case may }  
be,) of \_\_\_\_\_ }

Be it remembered, That on the — day of —, in the year of our Lord —, at —, in the said District (or County, or, as the case may be,) A. B. is convicted before the undersigned, (one) of Her Majesty's Justices of the Peace for the said District (or County, or, as the case may be,) for that the said A. B., (&c., stating the offence, and the time and place when and where committed), and I adjudge the said A. B. for his said offence to forfeit and pay the sum of —, (stating the penalty, and also the compensation, if any,) to be paid and applied according to law, and also to pay to the said C. D. the sum of —, for his costs in this behalf; and if the said several sums be not paid forthwith (or, on or before the — of — next,) \* I order that the same be levied by distress and sale of the goods and chattels of the said A. B., and in default of sufficient distress \* I adjudge the said A. B. to be imprisoned in the Common Gaol of the said District (or County, or, as the case may be,) at —, in the said District (or County) of —, (there to be kept at hard labor, if such be the sentence,) for the space of —, unless the said several sums and all costs and charges of the said distress (and of the commitment and conveying of the said A. B. to the said Gaol) be sooner paid.

Given under (my) hand and seal, the day and year first above mentioned, at —, in the district (or county, or, as the case may be,) aforesaid.

J. S. [L. S.]

\* Or when the issuing of a Distress Warrant would be ruinous to the defendant or his family, or it appears he has no goods whereon to levy a distress, then instead of the words between the asterisks \* \* say, "inasmuch as it hath now been made to appear to me that the issuing of a Warrant of Distress in this behalf would be ruinous to the said A. B. or his family," (or, "that the said A. B. hath no goods or chattels whereon to levy the said sums by distress.") I adjudge, &c., (as above, to the end.)

CHAP. 103.

(I. 2.) See ss. 43, 51.

CONVICTION FOR A PENALTY, AND IN DEFAULT OF PAYMENT,  
IMPRISONMENT.

Province of _____, District (or County, <i>or, as the case may          be,)</i> of _____ .	}	Canada,
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Be it remembered, That on the — day of —, in the year of our Lord —, at —, in the said District (or County, *or, as the case may be,*) A. B. is convicted before the undersigned, (*one*) of Her Majesty's Justices of the Peace for the said District, (*or County, or, as the case may be,*) for that he, the said A. B., (&c., *stating the offence, and the time and place when and where it was committed,*) and I adjudge the said A. B. for his said offence to forfeit and pay the sum of —, (*stating the penalty and the compensation, if any,*) to be paid and applied according to law; and also to pay to the said C. D. the sum of —, for his costs in this behalf; and if the said several sums be not paid forthwith (*or, on or before — next,*) I adjudge the said A. B. to be imprisoned in the Common Gaol of the said District (*or County, or, as the case may be,*) at —, in the said District (*or County*) of —, (*and there to be kept at hard labor,*) for the space of —, unless the said sums and the costs and charges of conveying the said A. B. to the said Common Gaol, shall be sooner paid.

Given under my hand and seal, the day and year first above mentioned, at —, in the District (*or County, or, as the case may be,*) aforesaid.

J. S. [L. S.]

(I. 3.) See ss. 43, 51.

## CONVICTION WHEN THE PUNISHMENT IS BY IMPRISONMENT, &amp;C.

Canada. }  
 Province of \_\_\_\_\_, }  
 District (or County, }  
 or, as the case may }  
 be,) of \_\_\_\_\_.

Be it remembered, That on the — day of —, in the year of our Lord —, in the said District (or County, or, as the case may be.) A. B. is convicted before the undersigned, (one) of Her Majesty's Justices of the Peace in and for the said District (or County, or, as the case may be,) for that he, the said A. B., (&c., stating the offence and the time and place when and where it was committed); and I adjudge the said A. B. for his said offence to be imprisoned in the Common Gaol of the said District (or County, or, as the case may be,) at —, in the County of —, (and there to be kept at hard labor) for the space of —; and I also adjudge the said A. B. to pay to the said C. D. the sum of — for his costs in this behalf, and if the said sum for costs be not paid forthwith (or on or before — next), then \* I order that the said sum be levied by distress and sale of the goods and chattels of the said A. B.; and in default of sufficient distress in that behalf \* I adjudge the said A. B. to be imprisoned in the said Common Gaol (and kept there at hard labor) for the space of —, to commence at and from the term of his imprisonment aforesaid, unless the said sum for costs shall be sooner paid.

Given under my hand and seal, the day and year first above mentioned, at —, in the District (or County, or, as the case may be,) aforesaid.

J. S. [L. S.]

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\* Or, when the issuing of a Distress Warrant would be ruinous to the defendant and his family, or it appears that he has no goods whereon to levy a distress, then, instead of the words between the asterisks \* \*, say, "inasmuch as it hath now been made to appear to me that the issuing of a Warrant of Distress in this behalf would be ruinous to the said A. B. and his family," (or "that the said A. B. hath no goods or chattels whereon to levy the said sum for costs by distress,") I adjudge, &c.

CHAP. 103.

(K. 1.) See ss. 43, 52.

ORDER FOR PAYMENT OF MONEY TO BE LEVIED BY DISTRESS,  
AND IN DEFAULT OF DISTRESS, IMPRISONMENT.

Canada,	}
Province of _____,	
District (or, County,	
or, as the case may be,) of _____.	

Be it remembered, That on \_\_\_\_\_ complaint was made before the undersigned, (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or, County, or, as the case may be,*) of \_\_\_\_\_, for that (*stating the facts entitling the complainant to the order, with the time and place when and where they occurred,*) and now at this day, to wit: on \_\_\_\_\_, at \_\_\_\_\_, the parties aforesaid appear before me, the said Justice [or the said C. D. appears before me the said Justice, but the said A. B., although duly called, doth not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me on oath that the said A. B. has been duly served with the Summons in this behalf, which required him to be and appear here on this day before me, or such Justice or Justices of the Peace for the said District (*or, County, or, as the case may be,*) as should now be here, to answer the said complaint, and to be further dealt with according to law]; and now having heard the matter of the said complaint, I do adjudge the said A. B. to pay the said C. D. the sum of \_\_\_\_\_ forthwith, (*or, on or before \_\_\_\_\_ next, or, as the Act or law may require,*) and also to pay to the said C. D. the sum of \_\_\_\_\_ for his costs in this behalf; and if the said several sums be not paid forthwith (*or, on or before \_\_\_\_\_ next*) then \* I hereby order that the same be levied by distress and sale of the goods and chattels of the said A. B., and in default of sufficient distress in that behalf \* I adjudge the said A. B. to be imprisoned in the Common Gaol of the said District (*or, County, or, as the case may be,*) at \_\_\_\_\_, in the said District (*or, County*) of \_\_\_\_\_, (and there kept to hard labor) for the space of \_\_\_\_\_, unless the said several sums and all costs and charges of the said distress (and of the commitment and conveying of the said A. B. to the said Common Gaol) shall be sooner paid.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the District (*or, County, or, as the case may be,*) aforesaid.

J. S. [L. s.]

\* *Or, when the issuing of a Distress Warrant would be ruinous to the defendant or his family, or it appears he has no goods whereon to levy a distress, then, instead of the words between the asterisks \* \*, say, "inasmuch as it hath now been made to appear to me that the issuing of a Warrant of Distress in this behalf would be ruinous to the said A. B. and his family," (or, "that the said A. B. hath no goods or chattels whereon to levy the said sums by distress.")*

(K. 2.) See ss. 43, 52.

ORDER FOR PAYMENT OF MONEY, AND IN DEFAULT OF  
PAYMENT, IMPRISONMENT.

Canada,  
Province of \_\_\_\_\_,  
District (or County,  
or, as the case may  
be,) of \_\_\_\_\_.

Be it remembered, That on \_\_\_\_\_ complaint was made before the undersigned, (one) of Her Majesty's Justices of the Peace in and for the said District (or, County, or as the case may be,) of \_\_\_\_\_, for that (stating the facts entitling the complainant to the order with the time and place when, and where they occurred,) and now on this day, to wit, on \_\_\_\_\_, at \_\_\_\_\_, the parties aforesaid appear before me the said Justice [or, the said C. D. appears before me, the said Justice, but the said A. B., although duly called, doth not appear by himself, his counsel, or attorney, and it is now satisfactorily proved to me upon oath that the said A. B. has been duly served with the Summons in this behalf, which required him to be and appear here this day before me, or such Justice or Justices of the Peace for the said District (or, County, or as the case may be,) as should now be here, to answer to the said complaint, and to be further dealt with according to law], and now having heard the matter of the said complaint I do adjudge the said A. B. to pay to the said C. D. the sum of \_\_\_\_\_ forthwith (or, on or before \_\_\_\_\_ next, or, as the Act or law may require,) and also to pay to the said C. D. the sum of \_\_\_\_\_ for his costs in this behalf; and if the said several sums be not paid forthwith (or, on or before \_\_\_\_\_ next), then I adjudge the said A. B. to be imprisoned in the Common Gaol of the said District (or, County, or as the case may be,) at \_\_\_\_\_, in the said District (or County,) of \_\_\_\_\_, (there to be kept

CHAP. 103. at hard labor, *if the Act or law authorize this*) for the space of ———, unless the said several sums (and costs and charges of commitment and conveying the said A. B. to the said Common Gaol) shall be sooner paid.

Given under (*my*) hand and seal, this ——— day of ———, in the year of our Lord ———, at ———, in the District (*or, County, or as the case may be,*) aforesaid.

J. S. [L. S.]

(K. 3.) See ss. 43, 52.

ORDER FOR ANY OTHER MATTER WHERE THE DISOBEYING OF  
IT IS PUNISHABLE WITH IMPRISONMENT.

Canada, }  
Province of ———, }  
District (*or County,* }  
*or as the case may* }  
*be,*) of ———.

Be it remembered, That on ——— complaint was made before the undersigned, (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or County, or as the case may be,*) of ———, for that (*stating the facts entitling the complainant to the order, with the time and place where and when they occurred,*) and now on this day, to wit, on ———, at ———, the parties aforesaid appear before me, the said Justice [*or the said C. D. appears before me, the said Justice, but the said A. B., although duly called, doth not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me upon oath that the said A. B. has been duly served with the Summons in this behalf, which required him to be and appear here this day before me, or such Justice or Justices of the Peace for the said District (or County, or as the case may be,) as should now be here, to answer to the said complaint, and to be further dealt with according to law*], and now having heard the matter of the said complaint, I do therefore adjudge the said A. B. to (*here state the matter required to be done*), and if upon a copy of the Minute of this Order being served upon the said A. B. either personally or by leaving the same for him at his last or most usual place of abode, he shall neglect or refuse to obey the same, in that case I adjudge the said A. B. for such his disobedience to be imprisoned in the Common Gaol of the said District (*or County, or as the case may be,*) at ———, in the said County of ———, (there to be kept at hard labor, *if the statute authorize this,*) for the space of ———, unless the

said order be sooner obeyed, and I do also adjudge the said A. B. to pay to the said C. D. the sum of \_\_\_\_\_ for his costs in this behalf, and if the said sum for costs be not paid forthwith (*or on or before* \_\_\_\_\_ next), I order the same to be levied by distress and sale of the goods and chattels of the said A. B., and in default of sufficient distress in that behalf, I adjudge the said A. B. to be imprisoned in the said Common Gaol (there to be kept at hard labor) for the space of \_\_\_\_\_, to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs shall be sooner paid. CHAP. 103.

Given under (*my*) hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the District (*or County, or as the case may be,*) aforesaid.

J. S. [L. s.]

(L.) *See s. 44.*

ORDER OF DISMISSAL OF AN INFORMATION OR COMPLAINT.

Canada, }  
 Province of \_\_\_\_\_, }  
 District (*or County,* }  
*or as the case may* }  
*be,*) of \_\_\_\_\_.

Be it remembered, That on \_\_\_\_\_ information was laid (*or, complaint was made*) before the undersigned (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or, County, or as the case may be,*) of \_\_\_\_\_, for that (*&c., as in the summons to the defendant,*) and now at this day, to wit, on \_\_\_\_\_, at \_\_\_\_\_, both the said parties appear before me in order that I should hear and determine the said information (*or complaint*) [*or the said A. B. appeareth before me, but the said C. D., although duly called, doth not appear \*,*] whereupon the matter of the said information (*or complaint*) being by me duly considered [it manifestly appears to me that the said information (*or complaint*) is not proved], I do therefore dismiss the same, and do adjudge that the said C. D. do pay to the said A. B. the sum of \_\_\_\_\_ for his costs incurred by him in his defence in this behalf: and if the said sum for costs be not paid forthwith (*or, on or before* \_\_\_\_\_), I order that the same be levied by distress and sale of the goods and chattels of the said C. D., and in default of sufficient distress in that behalf, I adjudge the said C. D. to be imprisoned in the Common Gaol of the said District (*or, County, or as the case may be,*) at \_\_\_\_\_,



CHAP. 103. in the said County of \_\_\_\_\_, (and there be kept at hard labor) for the space of \_\_\_\_\_, unless the said sum for costs and all costs and charges of the said distress (and of the commitment of the said C. D. to the said Common Gaol) shall be sooner paid.

Given under (*my*) hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the District (*or, County, or as the case may be,*) aforesaid.

J. S. [L. s.]

\* *If the informant (or complainant) do not appear, these words may be omitted.*

(M.) See s. 44.

CERTIFICATE OF DISMISSAL.

I hereby certify that an information (*or, complaint,*) preferred by C. D. against A. B. for that (*or as in the summons,*) was this day considered by me, one of Her Majesty's Justices of the Peace in and for the District (*or, County, or as the case may be,*) of \_\_\_\_\_, and was by (me) dismissed (*with costs*).

Dated this \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_.

J. S. [L. s.]

(N. 1.) See s. 58.

WARRANT OF DISTRESS UPON A CONVICTION FOR A PENALTY.

Canada,	}
Province of _____,	
District ( <i>or County,</i> <i>or as the case may</i> <i>be,</i> ) of _____.	

To all or any of the Constables or other Peace Officers in the said District (*or, County, or as the case may be,*) of \_\_\_\_\_ :

Whereas A. B., late of \_\_\_\_\_, (*laborer,*) was on this day (*or on \_\_\_\_\_ last past*) duly convicted before \_\_\_\_\_, (*one*) of Her Majesty's Justices of the Peace, in and for the said District (*or, County, or as the case may be,*) of \_\_\_\_\_, for that (*stating the offence as in the conviction,*) and it was thereby adjudged that the said A. B. should for such his offence forfeit and pay, (*&c., as in the conviction,*) and

should also pay to the said C. D. the sum of ——— for CHAP. 103.  
 his costs in that behalf; and it was thereby ordered that  
 if the said several sums should not be paid (*forthwith*) the  
 same should be levied by distress and sale of the goods and  
 chattels of the said A. B., and it was thereby also adjudged  
 that the said A. B., in default of sufficient distress should  
 be imprisoned in the Common Gaol of the said District  
 (*or, County, or as the case may be,*) at ———, in the said  
 County of ———, (*and there to be kept at hard labor*) for  
 the space of ———, unless the said several sums and all  
 costs and charges of the said distress, and of the commitment  
 and conveying of the said A. B. to the said Common Gaol  
 should be sooner paid; \* And whereas the said A. B.,  
 being so convicted as aforesaid, and being (*now*) required  
 to pay the said sums of ———, and ——— hath not paid  
 the same or any part thereof, but therein hath made  
 defaults; These are therefore to command you, in Her  
 Majesty's name, forthwith to make distress of the goods  
 and chattels of the said A. B.; and if within ——— days  
 next after the making of such distress, the said sums,  
 together with the reasonable charges of taking and keeping  
 the distress, shall not be paid, then you do sell the said  
 goods and chattels so by you distrained, and do pay the  
 money arising from such sale unto me (*the convicting  
 justice or one of the convicting justices,*) that I may pay  
 and apply the same as by law is directed, and may render  
 the overplus, if any, on demand, to the said A. B.; and if  
 no such distress can be found, then, that you certify the  
 same unto me, to the end that such further proceedings  
 may be had thereon as to law doth appertain.

Given under my hand and seal, this ——— day of  
 ———, in the year of our Lord ———, at ———, in the  
 District (*or County, or as the case may be,*) aforesaid.

J. S. [L. s.]

CHAP. 103.

(N. 2.) See s. 58.

WARRANT OF DISTRESS UPON AN ORDER FOR THE PAYMENT  
OF MONEY.

Canada, Province of _____, District (or County, or as the case may be,) of _____	}
--	---

To all or any of the Constables or other Peace Officers in  
the said District (or County, or as the case may be,) of \_\_\_\_\_.

Whereas on \_\_\_\_\_ last past, a complaint was made before \_\_\_\_\_, (one) of Her Majesty's Justices of the Peace in and for the said District (or County, or as the case may be,) for that (&c., as in the order,) and afterwards, to wit, on \_\_\_\_\_, at \_\_\_\_\_, the said parties appeared before \_\_\_\_\_, (as in the order,) and thereupon the matter of the said complaint having been considered, the said A. B. was adjudged (to pay to the said C. D. the sum of \_\_\_\_\_ on or before \_\_\_\_\_ then next), and also to pay to the said C. D. the sum of \_\_\_\_\_ for his costs in that behalf; and it was ordered that if the said several sums should not be paid on or before the said \_\_\_\_\_ then next, the same should be levied by distress and sale of the goods and chattels of the said A. B.; and it was adjudged that in default of sufficient distress in that behalf, the said A. B. should be imprisoned in the Common Gaol of the said District (or County, or as the case may be,) at \_\_\_\_\_, in the said County of \_\_\_\_\_, (and there kept at hard labor,) for the space of \_\_\_\_\_, unless the said several sums and all costs and charges of the distress (and of the commitment and conveying of the said A. B. to the Common Gaol) should be sooner paid; \*And whereas the time in and by the said order appointed for the payment of the said several sums of \_\_\_\_\_ and \_\_\_\_\_ hath elapsed, but the said A. B. hath not paid the same, or any part thereof, but herein hath made default; These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B.; and if within the space of \_\_\_\_\_ days after the making of such distress, the said last mentioned sums, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale unto me, (or some other of the convicting justices,

as the case may be,) that I (or he) may pay and apply the same as by law directed, and may render the overplus, if any, on demand to the said A. B.; and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein, as to law doth appertain. CHAP. 103.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the District (or County, or as the case may be,) aforesaid.  
J. S. [L. s.]

(N. 3.) See s. 59.

ENDORSEMENT IN BACKING A WARRANT OF DISTRESS.

Canada,  
Province of \_\_\_\_\_,  
District (or County,  
or as the case may  
be,) of \_\_\_\_\_

Whereas proof upon oath hath this day been made before me, one of Her Majesty's Justices of the Peace in and for the said District (or County, or as the case may be,) that the name of J. S. to the within warrant subscribed, is of the handwriting of the Justice of the Peace within mentioned, I do therefore authorize U. T., who bringeth me this warrant, and all other persons to whom this warrant was originally directed, or by whom the same may be lawfully executed, and also all Constables and other Peace Officers in the said District (or County, or as the case may be,) of \_\_\_\_\_, to execute the same within the said District (or County, or as the case may be.)

Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_.

O. K.

(N. 4.) See s. 63.

CONSTABLE'S RETURN TO A WARRANT OF DISTRESS.

I, W. T., Constable of \_\_\_\_\_, in the District (or County, or as the case may be,) of \_\_\_\_\_, hereby certify to J. S., Esquire, one of Her Majesty's Justices of the Peace for the District (or County, or as the case may be,) of \_\_\_\_\_, that by virtue of this Warrant I have made diligent search for the goods and chattels of the within mentioned A. B.,

CHAP. 103. and that I can find no sufficient goods or chattels of the said A. B. whereon to levy the sums within mentioned.

Witness my hand, this \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_.

W. T.

(N. 5.) See s. 63.

WARRANT OF COMMITMENT FOR WANT OF DISTRESS.

Canada, }  
Province of \_\_\_\_\_, }  
District (or County, }  
or as the case may }  
be,) of \_\_\_\_\_.

To all or any of the Constables and other Peace Officers in the District (or County, or as the case may be,) of \_\_\_\_\_, and to the Keeper of the Common Gaol of the said District (or County, or as the case may be,) of \_\_\_\_\_, at \_\_\_\_\_, in the said District (or County) of \_\_\_\_\_:

Whereas (&c., as in either of the foregoing Distress Warrants, N 1, 2, to the asterisks \*, and then thus): And whereas afterwards on the \_\_\_\_\_ day of \_\_\_\_\_, in the year aforesaid, I, the said Justice, issued a Warrant to all or any of the Constables or other Peace Officers of the District (or County, or as the case may be,) of \_\_\_\_\_, commanding them, or any of them, to levy the said sums of \_\_\_\_\_ and \_\_\_\_\_ by distress and sale of the goods and chattels of the said A. B.; And whereas it appears to me, as well by the return to the said Warrant of Distress by the Constable who had the execution of the same, as otherwise, that the said Constable hath made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the sums above mentioned could be found; These are therefore to command you, the said Constables or Peace Officers, or any one of you, to take the said A. B. and him safely to convey to the Common Gaol at \_\_\_\_\_, aforesaid, and there deliver him to the said Keeper, together with this Precept; And I do hereby command you, the said Keeper of the said Common Gaol, to receive the said A. B. into your custody in the said Common Gaol, there to imprison him (and keep him at hard labor) for the space of \_\_\_\_\_, unless the said several sums, and all the costs and charges of the said distress (and of the commitment and conveying of the

said A. B. to the said Common Gaol) amounting to the further sum of \_\_\_\_\_, shall be sooner paid unto you, the said Keeper; and for so doing this shall be your sufficient warrant. CHAP. 103.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the District (*or County, or as the case may be,*) aforesaid.

J. S. [L. S.]

(O. 1.) See s. 60.

WARRANT OF COMMITMENT UPON A CONVICTION FOR A  
PENALTY IN THE FIRST INSTANCE.

Canada,  
Province of \_\_\_\_\_,  
District (*or County,*  
*or as the case may*  
*be,*) of \_\_\_\_\_

To all or any of the Constables and other Peace Officers in the said District (*or County, or as the case may be,*) of \_\_\_\_\_, and to the Keeper of the Common Gaol of the said District (*or County, or as the case may be,*) of \_\_\_\_\_, at \_\_\_\_\_, in the said District (*or County*) of \_\_\_\_\_:

Whereas A. B., late of \_\_\_\_\_, (*laborer,*) was on this day convicted before the undersigned, (*one*) of Her Majesty's Justices of the Peace, in and for the said District (*or County, or as the case may be,*) for that (*stating the offence as in the conviction*), and it was thereby adjudged that the said A. B. for his offence should forfeit and pay the sum of \_\_\_\_\_, (*&c., as in the conviction,*) and should pay to the said C. D. the sum of \_\_\_\_\_ for his costs in that behalf; and it was thereby further adjudged that if the said several sums should not be paid (*forthwith*) the said A. B. should be imprisoned in the Common Gaol of the said District (*or County, or as the case may be,*) at \_\_\_\_\_, in the said District (*or County*) of \_\_\_\_\_, (and there kept at hard labor) for the space of \_\_\_\_\_, unless the said several sums (and the costs and charges of conveying the said A. B. to the said Common Gaol) should be sooner paid; And whereas the time in and by the said conviction appointed for the payment of the said several sums hath elapsed, but the said A. B. hath not paid the same or any part thereof; but therein hath made default; These are therefore to command you, the said Constables or Peace

CHAP. 103. Officers, or any one of you, to take the said A. B. and him safely to convey to the Common Gaol at \_\_\_\_\_ aforesaid, and there to deliver him to the said Keeper thereof, together with this Precept: And I do hereby command you, the said Keeper of the said Common Gaol, to receive the said A. B. into your custody in the said Common Gaol, there to imprison him (and keep him at hard labor) for the space of \_\_\_\_\_, unless the said several sums (and costs and charges of carrying him to the said Common Gaol, amounting to the further sum of \_\_\_\_\_), shall be sooner paid unto you, the said Keeper; and for your so doing, this shall be your sufficient warrant.

Given under (*my*) hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the District (*or County, or as the case may be*) aforesaid.

J. S. [L. S.]

(O. 2.) See s. 60.

WARRANT OF COMMITMENT ON AN ORDER IN THE FIRST INSTANCE.

Canada,  
Province of \_\_\_\_\_,  
District (*or County,*  
*or as the case may*  
*be,*) of \_\_\_\_\_.

To all or any of the Constables and other Peace Officers in the said District (*or County, or as the case may be,*) of \_\_\_\_\_, and to the Keeper of the Common Gaol of the District (*or County, or as the case may be,*) of \_\_\_\_\_, at \_\_\_\_\_, in the said District (*or County*) of \_\_\_\_\_:

Whereas on \_\_\_\_\_ last past, complaint was made before the undersigned, (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or County, or as the case may be,*) of \_\_\_\_\_, for that (&c., *as in the order*), and afterwards, to wit, on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, the parties appeared before me, the said Justice, (*or as it may be in the order*), and thereupon having considered the matter of the complaint, I adjudged the said A. B. to pay the said C. D. the sum of \_\_\_\_\_, on or before the \_\_\_\_\_ day of \_\_\_\_\_ then next, and also to pay to the said C. D. the sum of \_\_\_\_\_ for his costs in that behalf; and I also thereby adjudged that if the said several sums should not be paid on or before the \_\_\_\_\_ day of \_\_\_\_\_ then next, the said A. B. should be imprisoned in the

Common Gaol of the District (*or County, or as the case may be,*) of \_\_\_\_\_, at \_\_\_\_\_, in the said County of \_\_\_\_\_, (and there to be kept at hard labor) for the space of \_\_\_\_\_, unless the said several sums (and the costs and charges of conveying the said A. B. to the said Common Gaol, *as the case may be,*) should be sooner paid; And whereas the time in and by the said order appointed for the payment of the said several sums of money hath elapsed, but the said A. B. hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you, the said Constables and Peace Officers, or any of you, to take the said A. B. and him safely to convey to the said Common Gaol, at \_\_\_\_\_ aforesaid, and there to deliver him to the Keeper thereof, together with this Precept: And I do hereby command you, the said Keeper of the said Common Gaol, to receive the said A. B. into your custody in the said Common Gaol, there to imprison him (*and keep him at hard labor*) for the space of \_\_\_\_\_, unless the said several sums (and the costs and charges of conveying him to the said Common Gaol, amounting to the further sum of \_\_\_\_\_), shall be sooner paid unto you the said Keeper; and for your so doing, this shall be your sufficient warrant.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the District (*or County, or as the case may be,*) aforesaid.

J. S. [L. S.]

(Q. 1.) See s. 65.

WARRANT OF DISTRESS FOR COSTS UPON AN ORDER FOR  
DISMISSAL OF AN INFORMATION OR COMPLAINT.

Canada, }  
Province of \_\_\_\_\_, }  
District (*or County,*  
*or as the case may*  
*be,*) of \_\_\_\_\_.

To all or any of the Constables or other Peace Officers in the said District (*or County, or as the case may be,*) of \_\_\_\_\_:

Whereas on \_\_\_\_\_ last past, information was laid, (*or complaint was made*) before \_\_\_\_\_, (*one*) of Her Majesty's Justices of the Peace in and for the said District (*or County, or as the case may be,*) of \_\_\_\_\_, for that (*&c., as in the order of dismissal,*) and afterwards, to wit, on \_\_\_\_\_,



CHAP. 103. at ———, both parties appearing before ——— in order that (*I*) should hear and determine the same, and the several proofs adduced to (*me*) in that behalf being by (*me*), duly heard and considered, and it manifestly appearing to (*me*) that the said information (*or* complaint) was not proved, (*I*) therefore dismissed the same and adjudged that the said C. D. should pay to the said A. B. the sum of ———, for his costs incurred by him in his defence in that behalf; and (*I*) ordered that if the said sum for costs should not be paid (*forthwith*) the same should be levied on the goods and chattels of the said C. D., and (*I*) adjudged that in default of sufficient distress in that behalf the said C. D. should be imprisoned in the Common Gaol of the said District (*or* County, *or* as the case may be,) of ———, at ———, in the said District or County of ———, (and there kept at hard labor) for the space of ———, unless the said sum for costs, and all costs and charges of the said distress, and of the commitment and conveying of the said A. B. to the said Common Gaol should be sooner paid; \* And whereas the said C. D. being now required to pay to the said A. B. the said sum for costs, hath not paid the same or any part thereof, but therein hath made default; These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said C. D., and if within the space of ——— days next after the making of such distress, the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, then that you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to me (*the Justice who made such order or dismissal, as the case may be,*) that (*I*) may pay and apply the same as by law directed, and may render the overplus (if any) on demand to the said C. D., and if no such distress can be found then that you certify the same unto me (*or* to any other Justice of the Peace for the same District, (*or* County, *or* as the case may be,) to the end that such proceedings may be had therein as to law doth appertain.

Given under (*my*) hand and seal, this ——— day of ———, in the year of our Lord ———, at ———, in the District (*or* County, *or* as the case may be,) aforesaid.

J. S. [L. s.]

(Q. 2.) See s. 65.

WARRANT OF COMMITMENT FOR WANT OF DISTRESS IN THE  
LAST CASE.

Canada,  
Province of \_\_\_\_\_,  
District (or County,  
or as the case may  
be,) of \_\_\_\_\_.

To all or any of the Constables or Peace Officers in the said  
District (or County, or as the case may be) of \_\_\_\_\_,  
and to the Keeper of the Common Gaol of the said  
District (or County, or as the case may be,) of \_\_\_\_\_,  
at \_\_\_\_\_, in the said District (or County) of \_\_\_\_\_:

Whereas (&c., as in the last form to the asterisk \* and  
then thus:) And whereas afterwards, on the \_\_\_\_\_ day of  
\_\_\_\_\_, in the year aforesaid, I the said Justice, issued a  
Warrant to all or any of the Constables or other Peace  
Officers of the said District (or County, or as the case may  
be,) commanding them, or any one of them, to levy the  
said sum of \_\_\_\_\_ for costs by distress and sale of the  
goods and chattels of the said C. D.; and whereas it  
appears to me, as well by the return to the said Warrant  
of Distress of the Constable (or Peace Officer) charged with  
the execution of the same, as otherwise, that the said  
Constable hath made diligent search for the goods and  
chattels of the said C. D., but that no sufficient distress  
whereon to levy the sum above mentioned could be found:  
These are therefore to command you, the said Constables  
and Peace Officers, or any one of you, to take the said  
C. D. and him safely convey to the Common Gaol of the  
the said District (or County, or as the case may be,) at  
\_\_\_\_\_ aforesaid, and there deliver him to the Keeper  
thereof, together with this Precept: And I hereby command  
you, the said Keeper of the said Common Gaol, to receive  
the said C. D. into your custody in the said Common Gaol,  
there to imprison him (and keep him at hard labor) for the  
space of \_\_\_\_\_, unless the said sum, and all the costs and  
charges of the said distress (and of the commitment and  
conveying of the said C. D. to the said Common Gaol,  
amounting to the further sum of \_\_\_\_\_,) shall be sooner  
paid up unto you the said Keeper; and for your so doing  
this shall be your sufficient warrant.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_,  
in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the District  
(or County, or as the case may be,) aforesaid.

J. S. [L. S.]

CHAP. 103.

(R.) See s. 76.

CERTIFICATE OF CLERK OF THE COURT THAT THE COSTS OF  
AN APPEAL ARE NOT PAID.

Office of the Clerk of the County Court for the District (*or*  
County, *or as the case may be,*) of \_\_\_\_\_ :

(*Title of the Appeal.*)

I hereby certify that at a Term of the County Court, holden at \_\_\_\_\_, in and for the said District (*or* County, *or as the case may be,*) on \_\_\_\_\_ last past, an appeal by A. B. against a conviction (*or* order) of J. S., Esquire, one of Her Majesty's Justices of the Peace in and for the said District (*or* County, *or as the case may be,*) came on to be tried, and was there heard and determined, and the said Court thereupon ordered that the said conviction (*or* order) should be confirmed (*or* quashed) and that the said (*appellant*) should pay to the said (*respondent*) the sum of \_\_\_\_\_ for his costs incurred by him in the said appeal, and which sum was thereby ordered to be paid to the Clerk of the County Court for the said District (*or* County, *or as the case may be,*) on or before the \_\_\_\_\_ day of \_\_\_\_\_, instant, to be by him handed over to the said (*respondent*), and I further certify that the said sum for costs has not, nor has any part thereof, been paid in obedience to the said order.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_.

G. H.,  
Clerk of the Court.

(S. 1.) See s. 76.

WARRANT OF DISTRESS FOR COSTS OF AN APPEAL AGAINST  
A CONVICTION OR ORDER.

Canada, )  
Province of \_\_\_\_\_, )  
District (*or* County, )  
*or as the case may* )  
*be,*) of \_\_\_\_\_.

To all or any of the Constables or other Peace Officers in  
the said District (*or*, County, *or as the case may be,*)  
of \_\_\_\_\_.

Whereas (&c., *as in the warrants of distress, N. 1, 2,*  
*ante, and to the end of the statement of the conviction or*

*order, and then thus*): And whereas the said A. B. appealed CHAP. 103. to the County Court for the said District (*or County, or as the case may be,*) against the said conviction or order, in which appeal the said A. B. was the appellant, and the said C. D. (*or J. S., Esquire,* the Justice of the Peace who made the said conviction *or order*), was the respondent, and which said appeal came on to be tried and was heard and determined at the last term of said Court for the said District (*or County, or as the case may be,*) holden at ———, on ———; and the said Court thereupon ordered that the said conviction (*or order*) should be confirmed (*or quashed*), and that the said (*appellant*) should pay to the said (*respondent*) the sum of ——— for his costs incurred by him in the said appeal, which said sum was to be paid to the clerk of the Court for the said District (*or County, or as the case may be,*) on or before the ——— day of ———, one thousand eight hundred and ———, to be by him handed over to the said C. D.; and whereas the clerk of the Court of the said District (*or County, or as the case may be,*) hath, on the ——— day of ——— instant, duly certified that the said sum for costs had not been paid; \* These are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B., and if within the space of ——— days next after the making of such distress, the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to the clerk of the County Court for the said District (*or County, or as the case may be,*) of ———, that he may pay and apply the same as by law directed; and if no such distress can be found, then that you certify the same unto me or any other Justice of the Peace for the same District (*or county, or as the case may be,*) to the end that such proceedings may be had therein as to law doth appertain.

Given under my hand and seal, this ——— day of ———, in the year of our Lord ———, at ———, in the District (*or, County, or as the case may be,*) aforesaid.

O. K. [L. s.]

CHAP. 103.

(S. 2.) See s. 76.

WARRANT OF COMMITMENT FOR WANT OF DISTRESS IN THE  
LAST CASE.

Canada,	}
Province of _____,	
District (or County,	
or, as the case may be,) of _____.	

To all or any of the Constables or other Peace Officers in the said District (or County, or as the case may be,) of \_\_\_\_\_, and to the Keeper of the Common Gaol of the said District (or County, or as the case may be,) of \_\_\_\_\_, at \_\_\_\_\_, in the said County of \_\_\_\_\_.

Whereas (&c., as in the last form to the asterisk \* , and then thus:) And whereas, afterwards, on the \_\_\_\_\_ day of \_\_\_\_\_, in the year aforesaid, I, the undersigned, issued a Warrant to all or any of the Constables and other Peace Officers in the said District (or County, or as the case may be,) of \_\_\_\_\_, commanding them, or any of them, to levy the said sum of \_\_\_\_\_, for costs, by distress and sale of the goods and chattels of the said A. B.: And whereas it appears to me, as well by the return to the said Warrant of Distress of the Constable (or Peace Officer), who was charged with the execution of the same, as otherwise, that the said Constable hath made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the said sum above mentioned could be found; These are therefore to command you, the said Constables or Peace Officers, or any one of you, to take the said A. B. and him safely to convey to the Common Gaol of the said District (or county, or as the case may be,) of \_\_\_\_\_, at \_\_\_\_\_ aforesaid, and there deliver him to the said Keeper thereof, together with this Precept: And I do hereby command you, the said Keeper of the said Common Gaol, to receive the said A. B. into your custody in the said Common Gaol, there to imprison him (and keep him at hard labor) for the space of \_\_\_\_\_, unless the same sum and all costs and charges of the said distress (and for the commitment and conveying of the said A. B. to the said Common Gaol, amounting to the further sum of \_\_\_\_\_,) shall be sooner paid unto you, the said Keeper, and for so doing this shall be your sufficient warrant.

Given under my hand and seal, this — day of —, CHAP. 103.  
 in the year of our Lord —, at —, in the District  
*(or County, or as the case may be,)* aforesaid.

J. N. [L. S.]

T.

GENERAL FORM OF INFORMATION OR OF COMPLAINT ON  
 OATH.

Canada,  
 Province of —, }  
 District *(or County,*  
*or as the case may*  
*be,)* of —.

The information *(or complaint)* of C. D. of the Township  
 of —, in the said District *(or County, or as the case*  
*may be,)* of —, *(laborer)*. *(If preferred by an attorney*  
*or agent say: D. E., by his duly authorized Agent [or*  
*attorney,] in this behalf)* taken upon oath before me, the  
 undersigned, one of Her Majesty's Justices of the Peace,  
 in and for the said District *(or County, or as the case may*  
*be,)* of —, at N., in the said District *(County, or as the*  
*case may be)* of —, this — day of —, in the  
 year of our Lord one thousand eight hundred and —,  
 who saith \* that [he hath just cause to suspect and believe,  
 and doth suspect and believe, that] A. B., of the *(Township)*  
 of —, in the said District *(or County, as the case*  
*may be)* of —, within the space of —, *(the*  
*time within which the information or complaint must*  
*be laid,)* last past, to wit, on the — day of —,  
 instant, at the *(Township)* of —, in the District  
*(or County, or as the case may be,)* aforesaid, did  
*(here set out the act, offence, &c.,)* contrary to the form of  
 Statute in such case made and provided, and that the said  
 A. B. is about to leave the Province and may escape  
 punishment.

C. D. *(or D. E.)*

Taken and sworn before me, the day and year and at  
 the place above mentioned.

J. S.

CHAP. 103.

## FORM OF ORDER OF DISMISSAL OF AN INFORMATION OR COMPLAINT.

Canada,  
 Province of \_\_\_\_\_,  
 District (or, County,  
 or, as the case may  
 be,) of \_\_\_\_\_.

Be it remembered, That on \_\_\_\_\_, information was laid (or complaint was made) before the undersigned, (one) of Her Majesty's Justices of the Peace in and for the said District (or County, or as the case may be) of \_\_\_\_\_, for that \_\_\_\_\_, (&c., as in the summons of the defendant), and now at this day, to wit, on \_\_\_\_\_, at \_\_\_\_\_, (if at any adjournment insert here: "To which day the hearing of this case hath been duly adjourned, of which the said C. D. had due notice,") both the said parties appear before me in order that I should hear and determine the said information (or complaint), [or the said A. B. appeareth before me, but the said C. D., although duly called, doth not appear]; whereupon the matter of the said information [or complaint] being by me duly considered, it manifestly appears to me that the said information (or complaint) is not proved, and (if the informant [or complainant] do not appear these words may be omitted), I do therefore dismiss the same, (and do adjudge that the said C. D. do pay to the said A. B. the sum of \_\_\_\_\_ for his costs incurred by him in defence in his behalf; and if the said sum for costs be not paid forthwith, (or on or before \_\_\_\_\_), I order that the same be levied by distress and sale of the goods and chattels of the said C. D., and in default of sufficient distress in that behalf, I adjudge the said C. D. to be imprisoned in the Common Gaol of the said District (or County, as the case may be) of \_\_\_\_\_, at \_\_\_\_\_, in the said (County) of \_\_\_\_\_, (and there kept at hard labor) for the space of \_\_\_\_\_, unless the said sum for costs, and all costs and charges of the said distress (and of the commitment and conveying of the said C. D. to the said Common Gaol) shall be sooner paid.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the District (or County, or as the case may be,) aforesaid.

J. S. [L. S.]

## FORM OF CERTIFICATE OF DISMISSAL.

I hereby certify that an information (*or complaint*) preferred by C. D. against A. B. for that (&c., *as in the Summons*) was this day considered by me, one of Her Majesty's Justices of the Peace in and for the said District (*or County, as the case may be,*) of ———, and was by me dismissed (*with costs*).

Dated this ——— day of ———, one thousand ———.  
J. S.

GENERAL FORM OF NOTICE OF APPEAL AGAINST A  
CONVICTION OR ORDER.

To C. D. of, &c., and ——— (*the names and additions of the parties to whom the notice of appeal is required to be given.*)

Take notice that I, the undersigned A. B., of (&c.) do intend to enter and prosecute an appeal at the next term of the County Court, to be holden at ———, in and for the District (*or county, or as the case may be,*) of ———, against a certain conviction (*or order*), bearing date on or about the ——— day of ——— instant, and made by (you) C. D., Esquire, (*one*) of Her Majesty's Justices of the Peace for the said District (*or County, or as the case may be,*) of ———, whereby the said A. B. was convicted of having (*or was ordered*) ——— (*here state the act or offence as in the conviction, order, information or summons, as correctly as possible.*) And further, take notice that the grounds of my appeal are, first, that (I am not guilty of the said offence; secondly, that the formal conviction drawn up is not in law sufficient to support the said conviction of me, the said A. B.,) (*together with any other grounds, care being taken that all are stated, as the appellants will be precluded from going into any other than those stated.*)

Dated this ——— day of ———, one thousand eight hundred and ———.

A. B.

MEM.—*If this notice be given by several Defendants, or by an Attorney, it can easily be adapted to the special case.*

## FORM OF RECOGNIZANCE TO TRY THE APPEAL, &amp;C.

Be it remembered, That on ———, A. B., of ———, (*laborer,*) and L. M., of ———, (*grocer,*) and N. O., of ———, (*yeoman,*) personally came before the undersigned (*one*) of Her Majesty's Justices of the Peace in and for



CHAP. 103. the said District (*or County, or as the case may be*), of ———, and severally acknowledged themselves to owe to our Sovereign Lady the Queen the several sums following, that is to say: the said A. B. the sum of ——— and the said L. M. and N. O. the sum of ——— each, of good and lawful money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, her heirs and successors, if he, the said A. B., shall fail in the condition endorsed.

Taken and acknowledged the day and year first above mentioned at ———, before me. J. S.

The condition of the within written Recognizance is such, that if the said A. B. shall, at the (*next*) term of the County Court, to be holden at ———, on the ——— day of ——— next, in and for the said District (*or County, or as the case may be,*) of ———, enter and prosecute an appeal against a certain conviction bearing date the ——— day of ——— instant, and made by (me) the said justice, whereby he, the said A. B., was convicted, for that he, the said A. B., did on the ——— day of ———, at the township of ———, in the said District (*or County, or as the case may be,*) of ———, (*here set out the offence or act as stated in the conviction:*) And further, that if the said A. B. shall abide by and duly perform the order of the Court to be made upon the trial of such appeal, then the said Recognizance to be void, or else to remain in full force and virtue.

FORM OF NOTICE OF SUCH RECOGNIZANCE TO BE GIVEN TO  
THE DEFENDANT (APPELLANT) AND HIS SURETIES.

Take notice, that you, A. B., are bound in the sum of ———, and you, L. M. and N. O. in the sum of ——— each, that you the said A. B. at the next term of the County Court, to be holden at ———, in and for the said District (*or County, or as the case may be,*) of ———, enter and prosecute an appeal against a conviction (*or order*) dated the ——— day of ———, (*instant*) whereby you, A. B., were convicted of (*or ordered, &c.*) (*stating act or offence or the subject, of the order shortly*), and abide by and perform the order of the Court to be made upon the trial of such appeal; and unless you, the said A. B. prosecute such appeal accordingly, the recognizance entered into by you will forthwith be levied on you, and each of you.

Dated this ——— day of ———, one thousand eight hundred and ———.

## CHAPTER 104.

## OF THE SUPREME COURT AND PROCEDURE THEREIN.

## THE NOVA SCOTIA JUDICATURE ACT, 1884.

1. This Chapter may be cited as "The Nova Scotia Short title.  
Judicature Act, 1884."

## CONSTITUTION OF THE SUPREME COURT.

2. The Supreme Court of Nova Scotia, as constituted One Supreme Court of Judicature, including Equity Court.  
on the nineteenth day of April, A. D. 1884, includes the Equity Court or Court of the Judge in Equity, and, whether administering common law or equity, constitutes and shall continue to constitute one Supreme Court of Judicature for Nova Scotia.

(1.) The Bench of the Supreme Court shall be composed Bench of Supreme Court.  
of a Chief Justice and six other Judges, including the Judge in Equity. When a vacancy shall occur in the office of Judge in Equity the said Supreme Court Bench shall be composed of a Chief Justice and six other Judges.

(2.) No person shall be appointed a Judge of the Judges, qualifications of.  
Supreme Court unless he shall have been a resident barrister of the Province for ten years, and shall have been practising as such for five years before such appointment, or shall have held office as a county court judge in the Province.

(3.) The Judges of the Supreme Court shall hold no Judges, what Government offices they may hold.  
other offices under Government, except those of the Judge of the Court of Vice Admiralty and Deputy Judge thereof, and Judge Ordinary of the Court for Divorce and Matrimonial Causes.

(4.) The persons hereafter appointed to fill the places Judges, how to be appointed.  
of the Chief Justice and other Judges of the Supreme Court and their successors respectively, are to be appointed by the authority mentioned in the British North America Act, and with the same title as heretofore.

(5.) Save as in this Act is otherwise expressly Judges to have equal powers.  
provided, all the Judges of the Supreme Court hereinbefore mentioned, and their successors, shall have in all respects equal power, authority and jurisdiction.

**CHAP. 104.** (6.) The Chief Justice for the time being of the Supreme Court shall be entitled to precedence over all the other Judges thereof. The present Judge in Equity shall continue to hold the title of Judge in Equity while he remains a Judge of the Supreme Court, after which the office, title, and distinction shall be abolished.

Precedence of Chief Justice.

Judge in Equity, title, &c., of.

Judges' precedence.

(7.) The Judges of said Supreme Court and their respective successors in office shall be entitled to have, and shall have, precedence next after the Chief Justice, according to seniority of appointment.

Judges' oath of office.

3. The oath to be taken by the Judges to be hereafter appointed shall be the following:—"I do solemnly and sincerely promise and swear, that I will duly and faithfully, and to the best of my skill and knowledge, execute the powers and trusts reposed in me as ———. So help me God."

Oath of office, by whom administered.

4. The oath is to be administered to the Chief Justice and the other Judges by the Lieutenant-Governor, or such person as may be appointed by him to administer the same; or by any person who may be appointed by the Governor-General to administer oaths of office.

Saving of rights and obligations of existing Judges.

5. Every existing Judge is, as to all matters within the Legislative authority of this Province, to remain in the same condition as if this Act had not passed, except as is herein otherwise provided; and subject to the provisions of this Act, each of the said existing Judges shall be capable of performing, and liable to perform, all duties which he would have been capable of performing or liable to perform if this Act had not passed.

Provision for former extraordinary duties of Judges.

6. If in any case not expressly provided for by this Act a liability to any duty, or any authority or power, not incident to the administration of justice, shall have been conferred by any statute or law on the Judges or any Judge of the Court (save as hereinafter mentioned), every Judge of the said Supreme Court shall be capable of performing and exercising, and shall be liable to perform and be empowered to exercise, every such duty, authority and power, and as if he had been duly appointed the successor of a Judge liable to such duty or possessing such authority or power, before the nineteenth day of April, A. D. 1884. Any such duty, authority or power, imposed or conferred in any such case as aforesaid upon the Chief Justice of the Supreme Court, shall continue to be performed and exercised by him and by his successor and successors, in the same manner as if this Act had not passed.

7. The Lieutenant-Governor-in-Council may from time to time determine and declare the seal to be used in the Supreme Court, and by which its proceedings shall be certified and authenticated; and until another seal for the Supreme Court is established, the seal in use in the Supreme Court up to the first day of October, A. D. 1884, may be used therefor.

CHAP. 104.

Seal of Supreme Court.

## JURISDICTION OF THE SUPREME COURT.

8. The Supreme Court of Nova Scotia shall continue to be a court of record, and, subject to the provisions of this Act, shall continue to have and exercise the jurisdiction which, immediately preceding the first day of October, A. D. 1884, was vested in, or capable of being exercised by, the Supreme Court and the Court of the Equity Judge; and shall be deemed to be and shall be a continuation of the said Courts (subject to the provisions of this Act), under the name of "The Supreme Court of Nova Scotia."

Jurisdiction of "The Supreme Court of Nova Scotia."

(1.) The Supreme Court shall have within this Province the same powers as were formerly exercised by the Courts of Queen's Bench, Common Pleas, Chancery, and Exchequer, in England; and also such and the same powers as were on the nineteenth day of April, A. D. 1884, exercised in England by the Supreme Court of Judicature, save in respect of Probate and Surrogate Courts.

Powers, what to include.

(2.) The jurisdiction aforesaid shall include (subject to the exceptions hereinafter contained) the jurisdiction, which, immediately preceding the first day of October, A. D. 1884, was vested in or capable of being exercised by all or any one or more of the Judges of the said Supreme Court of Nova Scotia, sitting in Court or Chambers, or elsewhere, when acting as Judges or a Judge in pursuance of any statute, or by common law, or otherwise, and all powers given to any such Court, or to any such Judges or Judge by any statute or law, and also all ministerial powers, duties and authorities incident to any and every part of the jurisdiction aforesaid, as well civil as criminal.

Jurisdiction, what to include.

9. On and after the first day of October, A. D. 1884, the several jurisdictions vested in the said Supreme Court shall cease to be exercised except in the name of said "Supreme Court," as provided by this Act, save as is otherwise in this Act provided.

Jurisdiction to be exercised in name of "Supreme Court."

10. In all actions, causes, matters and proceedings whatsoever, which shall have been heard, and in which judgment shall not have been given, or having been given, shall not have been signed, drawn up, passed, entered, or otherwise perfected before the first day of October, A. D.,

Provisions as to pending business.

CHAP. 104. 1884 ; such judgment, decree, rule or order may be given or made, signed, drawn up, passed, entered, or perfected respectively, on or after the said first day of October and by the same Judges and officers, and generally in the same manner in all respects as if this Act had not passed ; and the same shall take effect, to all intents and purposes, as if the same had been duly perfected before the said first day of October.

Provision in case judgment, &c., is perfected before 1st of October, 1884.

(1.) Every judgment, decree, rule or order of the Supreme Court, whether at common law or in equity, which shall have been duly perfected at any time before the first day of October, A. D. 1884, may be executed and enforced, and, if necessary, amended or discharged by the Supreme Court, in the same manner as if it had been a judgment, decree, rule or order of the said Supreme Court, made on or after the said first day of October. And all causes, matters and proceedings, whatsoever, which shall be pending in the Supreme Court, whether at law or in equity, on the said first day of October, shall be continued and concluded in and before the said Supreme Court ; and the said Supreme Court shall have jurisdiction for so continuing and concluding matters criminal as well as civil.

When cause pending.

Form and manner of procedure of such causes.

(2.) So far as relates to the form and manner of procedure, such causes, matters and proceedings, or any of them, shall be continued and concluded, in and before the said Supreme Court, as shall be directed by Rules or Orders of Court made under the authority of this Act.

Provision as to exercise of jurisdiction.

11. The jurisdiction of the Supreme Court shall be exercised in the manner provided in this Act, or by such Rules and Orders of Court as may be made or passed pursuant to this Act ; and where no special provision is contained in this Act or in any such Rules or Orders of Court with reference thereto, it shall be exercised, as nearly as may be, in the same manner as the same might have been exercised if this Act had not been passed.

### *Rules of Law.*

Law and equity to be concurrently administered.

12. In every civil cause or matter commenced in the Supreme Court, law and equity shall be administered therein, according to the Rules following :—

Equities of plaintiff.

(1.) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract, or against any right, title, or claim whatsoever, asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right which heretofore could only have been given by a Court of Equity, the said Supreme Court and every Judge thereof, shall give to such

plaintiff or petitioner such and the same relief as ought to have been given by the Court of the Equity Judge or the English Court of Chancery, when the same existed, in a suit or proceedings for the same or the like purpose properly instituted before the nineteenth day of April, A. D. 1884. CHAP. 104.

(2.) If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract, or against any right, title or claim, asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the said Supreme Court and every Judge thereof shall give to every equitable estate, right or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect by way of defence against the claim of such plaintiff or petitioner as the Court of the Equity Judge or said Court of Chancery ought to have given, if the same or the like matters had been relied on by way of defence in any suit or proceeding instituted in either of these Courts, for the same or the like purpose, before the nineteenth day of April, A. D. 1884. Equities of defendant.

(3.) The said Supreme Court and every Judge thereof shall also have power to grant to any defendant in respect to any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said Court existing immediately preceding the first day of October, A. D. 1884, or any Judge thereof, might have granted whether at law or in equity in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim, pursuant to any rule of Court or any order of the Court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim as if he had been duly sued in the ordinary way by such defendant. Counter claims and third parties.

## CHAP. 104.

Equities appear-  
ing incidentally.

(4.) The said Supreme Court and every Judge thereof shall recognize and take notice of all equitable estates, titles and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court of the Equity Judge, or the aforesaid Court of Chancery would have recognized, and taken notice of the same, in any suit or proceeding duly instituted therein before the nineteenth day of April, A. D. 1884.

Defence or stay  
of proceedings  
instead of in-  
junction or  
prohibition.

(5.) No cause or proceeding at any time pending in the said Supreme Court shall be restrained by prohibition or injunction, but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained if this Act had not passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto. Provided always that nothing in this Act contained shall disable the said Supreme Court or any Judge thereof from directing a stay of proceedings in any cause or matter pending before said Court or Judge if it or he shall think fit; and any person, whether a party or not to any such cause or matter, who would have been entitled, if this Act had not passed, to apply to the Court or a Judge thereof to restrain the prosecution, thereof, or who may be entitled to enforce by attachment or otherwise any judgment, decree, rule or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to said Supreme Court or any Judge thereof by motion in a summary way for a stay of proceedings in such cause or matter, either generally or so far as may be necessary for the purposes of justice; and the Court or Judge shall thereupon make such order as may be just.

Common law  
and statutory  
rights and  
duties.

(6.) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this Act, the said Supreme Court and every Judge thereof shall recognize and give effect to all legal claims and demands, and all estates, rights, duties, obligations and liabilities existing by the common law or created by any statute, in the same manner as the same would have been recognized and given effect to if this Act had not passed, by the said Supreme Court either at law or in equity.

Complete justice  
to be done in  
every case as far  
as possible.

(7.) The Supreme Court in the exercise of the jurisdiction vested therein by this Act, in every cause or matter pending before said Court, shall have power to grant, and shall grant, either absolutely or on such reasonable

terms and conditions as to said court shall seem just, all such remedies whatsoever, as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter, so that as far as possible all matters so in controversy between the said parties respectively, may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters, avoided. CHAP. 104.

13. (1.) No claim of a *cestui que trust* against his trustee, for any property held on any express trust; or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitation. Statute of Limitations inapplicable to express trusts.

(2.) An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate. Equitable waste.

(3.) There shall not, on and after the first day of October, A. D. 1884, be any merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity. Merger.

(4.) A mortgagor entitled for the time being to the possession or the receipt of the rents and profits of any land, as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof shall have been given by the mortgagee, may sue for such possession, or distrain for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person, and in that case he may sue or distrain jointly with such other person. Suits for recovery of land, rents, &c., by mortgagors.

(5.) In case of an assignment of a debt or other chose in action, if the debtor, trustee, or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled if he think fit to call upon the several persons making claim thereto to interplead concerning the same, or he may if he think fit pay the same into the Supreme Court, upon obtaining a Judge's order therefor, to abide the determination of the Supreme Court in respect thereof. Assignment of debts and choses in action.



CHAP. 104. (6.) Stipulations in contract, as to time or otherwise, which would not before the nineteenth day of April, A. D. 1884, have been deemed to be, or to have become, of the essence of such contracts, in a Court of Equity, shall receive in the Supreme Court the same construction and effect as they would previously thereto have received in equity.

Mandamus, injunctions, and receivers.

(7.) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the Court, in all cases in which it shall appear to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court shall think just; and if an injunction is asked, either before or at or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted if the Court should think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained, under any color of title; and whether the estates claimed by both or by either of the parties are legal or equitable.

Custody of infants.

(8.) In questions relating to the custody and education of infants, the rules of equity shall prevail.

Cases of conflict not enumerated.

(9.) Generally, in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the rules of equity and the rules of the common law, with reference to the same matter, the rules of equity shall prevail.

#### SITTINGS AND DISTRIBUTION OF BUSINESS.

Abolition of Terms except as measures of time

14. The division of the legal year into Terms is abolished, so far as relates to the administration of justice; and there shall not be terms applicable to any sitting or business of the Supreme Court, but in all cases in which, under the law now existing, the terms into which the legal year is divided are used as a measure for determining the time at or within which any act is required to be done, the same may continue to be referred to for the same or the like purpose, unless and until provision is otherwise made by any lawful authority.

Sittings of Court

15. Subject to Rules of Court, the Supreme Court and the Judges thereof respectively, shall have power to sit and act at any time and at any place, for the transaction of any part of the business of such Court or of such Judge, or for the discharge of any duty which, by any statute or otherwise, is required to be discharged during or after term.

16. All causes and matters in the Supreme Court shall be distributed among the several Judges of the said Supreme Court in such manner as may from time to time be determined by any rules of Court, or orders of transfer, to be made under the authority of this Act. Every document by which any cause or matter shall be commenced in the said Supreme Court shall be marked with the name of the said Court. It shall not be necessary in order to confer jurisdiction on any Judge that any rule or order of transfer be made.

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Rules of Court to provide for distribution of business.

Documents to be marked.

(1.) All interlocutory and other steps and proceedings in or before the said Supreme Court, in any cause or matter subsequent to the commencement thereof, shall be dealt with and disposed of under and by virtue of the Rules of Court in that behalf.

Interlocutory and other steps, how dealt with.

17. The Judge to be selected for the trial of any election petition for Nova Scotia in each year, under the provisions of Chapter 5 of the Revised Statutes, "Of Controverted Elections and Corrupt Practices," shall be selected out of the Judges of the Supreme Court in such manner as may be provided by any Rules of Court to be made for that purpose, subject to the approval of the Lieutenant-Governor-in-Council.

Judge for the trial of N. S. election petitions,—how selected.

18. Every action and proceeding in the Supreme Court and all business arising out of the same, except as herein-after provided, shall so far as is practicable and convenient, be heard, determined and disposed of before a single Judge.

Business so far as practicable to be disposed of by single judge.

(1.) A judge sitting elsewhere than in the Supreme Court is to decide all questions coming properly before him, but may reserve any case, or any point in any case, for the consideration of the Supreme Court *in banco*.

Judge to decide, but may reserve case.

(2.) In all such cases any Judge sitting in Court shall be deemed to constitute a Court.

Judge to constitute a Court.

#### TRIAL AND PROCEDURE.

19. At the trial of any action no party shall be entitled to judgment on the ground of his pleading being true, if the facts proved are not sufficient in point of law to entitle him to judgment.

Party to prove facts sufficient in point of law.

20. Subject to Rules of Court, the trials and procedure in all causes, whether of a legal or equitable nature, shall be as nearly as possible the same, and the following provisions shall prevail:—

Modes of trial.

In actions of libel, slander, criminal conversation, seduction, malicious arrest, malicious prosecution, and false imprisonment, all questions which might heretofore have been tried by a jury, shall, subject to the other provisions

Jury trials.

CHAP. 104. of this Act, be tried by a jury, unless the parties in person or by their solicitors or counsel, waive such trial. All other issues of fact in any civil action in the Supreme Court, and the assessment on enquiry of damages in every such action, may, and (subject to the provisions hereinafter contained) in the absence of such notice as in sub-section one of this section mentioned, shall be heard, tried and assessed by a judge without the intervention of a jury :

If plaintiff or defendant requires a jury notice must be given.

(1.) If the plaintiff desires such issue to be tried or damages to be assessed or enquired of by a jury, he shall give notice to the Court and to the defendant or defendants, by filing with his statement of claim, and serving on the defendant or defendants, a notice in writing to the effect hereinafter expressed; and if a defendant requires such issue to be tried or damages to be assessed or enquired of by a jury, he shall give notice to the plaintiff or plaintiffs by filing with his defence or counter claim, and serving on the plaintiff or plaintiffs, a notice in writing to the like effect, that is to say :

Form of notice.

“The plaintiff (*or one or more of them*) or the defendant, (*or one or more of them, as the case may be,*) requires that the issues in this cause be tried (*or the damages assessed*) by a jury;” and a copy of such notice shall be attached to the issue.

Waiver of trial by jury.

(2.) The parties present at the trial may consent that the said notice shall be waived, and the case tried and damages assessed by the Judge, and may endorse a memorandum of such consent upon the issue, and thereupon the Judge shall proceed to the trial of the issues or the assessment of the damages, without the intervention of a jury.

Judge may direct trial by jury.

(3.) Notwithstanding anything in the preceding sub-section contained, the Judge presiding at the trial may, in his discretion, direct that any such action shall be tried or the damages assessed by a jury; and upon application to the court in which the action is pending, or to a Judge thereof, by an order or summons made before the trial, or by the direction of the Judge presiding at the trial, the issues may be tried and damages assessed without the intervention of a jury.

Verdict of Judge, same effect as verdict of jury.

(4.) The verdict or finding of the Judge, by whom any issue is tried or damages assessed, shall have the like effect as the verdict or finding of a jury.

Legal and equitable issues tried at the same time.

(5.) Where in any action both legal and equitable issues are raised, they shall be heard and tried at the same time, unless the Court or a Judge thereof, or the Judge presiding at the trial, otherwise directs.

(6.) Where upon the trial of any action any question CHAP. 104. of fact or of law arises for the determination of the presiding Judge, he may, of his own motion, or by consent of parties, reserve the giving of his final decision on the question so raised to a future day, not later than sixty days from the day of such reservation, and his decision whenever given shall be considered as if given at the time of the trial. Such decision shall be filed with the Prothonotary of the Court where the cause was tried, and it shall be the duty of the Prothonotary immediately to give notice in writing to all the parties to the cause or their respective attorneys, that such decision has been filed, and each of the parties shall have and exercise, within twenty days from the service of such notice, all such rights as he possessed or might have had or exercised if judgment had been given on the trial of the cause.

Judge may reserve final decision not more than sixty days.

Decision to be filed with Prothonotary.

Duty of Prothonotary.

(7.) Upon any trial by a jury, where the Court or the presiding Judge otherwise directs, it shall not be lawful for such jury to give a general verdict, and it shall be the duty of such jury to give a special verdict if the Court or presiding Judge so directs; and unless the Court or the presiding Judge otherwise directs, the jury may give either a general or a special verdict, but this sub-section shall not apply to actions of libel.

Judge may direct jury to give a special verdict.

Proviso.

(8.) Upon a trial by jury, in any case except an action for libel, slander, criminal conversation, seduction, malicious arrest, malicious prosecution, and false imprisonment, the Judge, instead of directing the jury to give either a general or a special verdict, may direct the jury to answer any questions of fact stated to them by the Judge for the purpose; and in such case the jury shall answer such questions, and shall not give any verdict; and on the finding of the jury upon the questions which they answer, the Judge shall enter the verdict; and the verdict, so entered, shall be as effectual as if the same had been the verdict of the jury. And on the trial of any such case counsel may require the Judge presiding to submit to the jury any pertinent or relevant question raised by any of the issues or necessary to be answered by the jury in order to a complete determination of all matters involved in the case; and in the event of any presiding Judge refusing to put to the jury any question required by counsel to be so submitted, such refusal may be used as a ground for new trial.

Judge may direct jury to answer questions of fact, except in certain cases.

21. There shall be as heretofore five circuits in the Province: The Midland, the Shore, the Western, the Eastern, and the Cape Breton Circuit.

Circuits.

CHAP. 104. *The Midland Circuit* shall embrace the Counties of Hants, Colchester, and Cumberland.

*The Shore Circuit* shall embrace the Counties of Lunenburg, Queens, Shelburne, and Yarmouth.

*The Western Circuit* shall embrace the Counties of Digby, Annapolis, and Kings.

*The Eastern Circuit* shall embrace the Counties of Pictou, Antigonish, and Guysborough.

*The Cape Breton Circuit* shall embrace the Counties of Cape Breton, Victoria, Inverness, and Richmond.

Commencement  
and duration of  
Circuit Courts.

22. The Supreme Court shall sit twice a year for the trial of causes and issues, whether legal or equitable, which are to be heard and determined by a Judge without a jury, and also for the trial of jury causes, in the several counties, as follows :—

#### MIDLAND CIRCUIT.

##### HANTS.

*At Windsor*—On the last Tuesday of May, to sit for five days ; and on the Tuesday before the last Tuesday of September, to sit, if necessary, eleven days.

##### COLCHESTER.

*At Truro*—On the first Tuesday of June, to sit, if necessary, eleven days ; and on the first Tuesday of October, to sit for five days.

##### CUMBERLAND.

*At Amherst*—On the third Tuesday of June, and the second Tuesday of October ; to sit each term, if necessary, fourteen days.

#### SHORE CIRCUIT.

##### LUNENBURG.

*At Lunenburg*—On the Thursday before the first Tuesday of June, and on the Thursday after the second Tuesday of October.

##### QUEENS.

*At Liverpool*—On the second Tuesday of June, to sit for five days ; and on the first Tuesday of October, to continue sitting for seven days, if necessary.

##### SHELBURNE.

*At Barrington*—On the third Tuesday of June.

*At Shelburne*—On the last Tuesday of September.

## YARMOUTH.

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*At Yarmouth*—On the fourth Tuesday of June.

*At Tusket Village*—On the Tuesday next before the last Tuesday of September.

## WESTERN CIRCUIT.

## DIGBY.

*At Digby*—On the second Tuesday of June.

*At Clare*—On the last Tuesday of September.

## ANNAPOLIS.

*At Bridgetown*—On the third Tuesday of June.

*At Annapolis*—On the first Tuesday of October.

## KINGS.

*At Kentville*—On the first Tuesday of June, and on the second Tuesday of October.

## EASTERN CIRCUIT.

## PICTOU.

*At Pictou*—On the Thursday next after the second Tuesday of June, and the Thursday next after the third Tuesday of October; to sit each term, if necessary, fourteen days.

## ANTIGONISH.

*At Antigonish*—On the first Tuesday of June, and second Tuesday of October; and to sit seven days in each term.

## GUYSBOROUGH.

*At Guysborough*—On the last Tuesday of May, and the first Tuesday of October.

## CAPE BRETON CIRCUIT.

## CAPE BRETON.

*At Sydney*—On the first Tuesday of June, and on the first Tuesday of October; such last term to extend for ten days, if necessary.

## VICTORIA.

*At Baddeck*—On the second Tuesday of June and the third Tuesday of October; the last term to continue for five days, if necessary.

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## INVERNESS.

*At Port Hood*—On the third Tuesday of June, and the fourth Tuesday of October.

## RICHMOND.

*At Arichat*—On the fourth Tuesday of June, to sit ten days, if necessary; and on the first Tuesday of November, to sit five days if necessary.

Wherever in this section the Court is directed to sit for any specified number of days, such number shall be exclusive of Sundays.

Duration of circuit terms or sittings.

23. The respective terms or sittings of the Supreme Court, in the preceding section mentioned, shall continue as long as the business shall require; but the same shall not be continued longer than the Saturday before the day hereby appointed for opening the Court at the next place to which the Judge presiding at such Court shall be about to proceed on his circuit, nor longer than the second Saturday after the first day of such terms or sittings respectively, except during the Spring circuits, when, if all the causes for trial upon the docket at any term of the Supreme Court held at Amherst, Yarmouth, Bridgetown, Pictou, or Arichat, have not been reached, the term of said Court shall be continued for the trial of said causes in each of said places until the Saturday preceding the day appointed for the opening of the first Court of the Summer term upon the same circuit, or until all the causes upon the docket for trial have been tried; and the jury summoned in attendance for the trial of causes at said term shall continue to be the jury for the trial of causes at the extension of said term, until a new jury has been summoned.

Extra or Summer terms.

24. There shall be an extra or Summer term of the Supreme Court for the trial of the causes that have not been reached upon the docket of causes for trial during the Spring circuits, to be held as follows:—

## MIDLAND CIRCUIT.

*At Windsor*, on the third Tuesday of July; *at Truro*, on the third Tuesday of August.

## SHORE CIRCUIT.

*At Shelburne*, on the fourth Tuesday of July; *at Liverpool*, on the third Tuesday of August; *at Lunenburg*, on the second Tuesday of September.

## WESTERN CIRCUIT.

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*At Digby*, on the third Tuesday of July; *at Kentville*, on the third Tuesday of August.

## EASTERN CIRCUIT.

*At Antigonish*, on the third Tuesday of July; *at Guysborough*, on the third Tuesday of August.

## CAPE BRETON CIRCUIT.

*At Port Hood*, on the third Tuesday of July; *at Baddeck*, on the second Tuesday of August; *at Sydney*, on the third Tuesday of August.

The Judges who attend at said Summer circuits shall severally preside in the Courts which they held during the Spring circuits, except in case of illness or otherwise, when another Judge may preside.

25. There shall be no Summer term held in any county in any year in which all the causes for trial upon the docket of causes at the Spring term in said year had been called for trial, and it shall not be necessary to give notice of trial for said Summer term or re-enter the causes upon the docket, but the docket of causes of the Spring term shall be the docket of causes for the Summer term as if said Summer term were a continuation of the Spring term of said Court.

Where no Summer term is to be held.

26. The Court shall continue to sit in any county in which a Summer term is held until the Saturday preceding the day for the opening of the next Court upon the same circuit at said term, or if said Court shall be the last on said circuit then for four weeks, or until all the causes upon the docket for trial have been tried.

Time of sitting of Court at Summer term.

27. At all such sittings separate lists shall be made for the jury and non-jury causes; and the jury causes shall be first disposed of, unless where the Judge shall see fit, for some special reason, to direct otherwise. This section is subject to the law in force by virtue of the several statutes regulating the trial of jury and non-jury causes.

Separate lists of jury and non-jury causes.

28. Subject to any Rules of Court and to such right as may exist to have particular cases submitted to the verdict of a jury, any question arising in any cause or matter (other than a criminal proceeding by the Crown) before the Supreme Court or a Judge thereof, may be referred by the Court or Judge before whom such cause or matter may be pending, for enquiry or report to a Judge of a County Court, or to an official referee, or to any other

Judge may refer questions in certain cases.



CHAP. 104. person agreed on by the parties; and the report of such referee may be adopted wholly or partially by the Court, and may (if so adopted) be enforced as a judgment by the Court.

Court or Judge may call in the aid of assessors.

(1.) The Supreme Court or Judge as aforesaid may also in any such cause or matter as aforesaid, in which it may be deemed expedient by such Court or Judge so to do, call in the aid of one or more assessors specially qualified, and try and hear such cause or matter, wholly or partially, with the assistance of such assessor or assessors.

Remuneration of assessors.

The remuneration, if any, to be paid to such referees or assessors shall be determined by the Court.

Judge may refer cause in certain cases.

29. In any cause or matter (other than a criminal proceeding by the Crown before the said Supreme Court), in which all parties interested who are under no disability consent thereto, and also without such consent in any such cause or matter requiring any prolonged examination of documents or accounts, or any scientific or local investigation which cannot, in the opinion of a Court or a Judge, conveniently be made before a jury, or conducted by the Court or Judge directly, the Court or a Judge may at any time, on such terms as may be thought proper, order any such question or issue of fact, or any question of account arising in the cause or matter, to be tried either before a Judge of a County Court, or before an official referee, or (if the parties so agree) before a referee to be named by them.

Causes referred, to be conducted according to the Act and Rules.

30. All such trials shall be conducted in such manner as may be prescribed by this Act and by Rules of Court, and subject thereto, in such manner as the Court or Judge ordering the same shall direct.

Referees deemed officers of the Court.

31. In all cases of a reference to or trial by referees under this Act, the referees shall be deemed to be officers of the Court, and shall have such authority for the purpose of the reference or trial as shall be prescribed by Rules of Court, or, subject to such Rules, by the Court or Judge ordering such reference or trial; and the report of any referee upon any question of fact, on any such trial, shall (unless set aside by the Court) be equivalent to the verdict of a jury.

Court or Judge to have power to vary or set aside awards, &c.

32. With respect to all such proceedings before referees, and to their reports, the Court or Judge shall have, in addition to any other powers, the same or the like powers, as by the statutes in force are given to the Supreme Court or a Judge thereof, with respect to references to arbitration, and proceedings before arbitrators, and their awards, and appeals or proceedings to amend, vary or set aside the said awards.

33. Save as by this Act or by any Rules of Court may CHAP. 104.  
 be otherwise provided, all forms and methods (as nearly as Forms and methods of procedure of Supreme Court not inconsistent with this Act or the Rules may continue to be used in certain cases.  
 may be) of procedure, which, immediately preceding the first day of October, A. D. 1884, were in force in relation to the Supreme Court, under or by virtue of any law, general order or rule whatsoever, and which are not inconsistent with this Act or any Rules of Court, may continue to be used and practised in the said Supreme Court in such and the like cases and for such and the like purposes as those to which they would have been applicable in the Supreme Court, if this Act had not passed.

### *Rules of Court.*

34. On and after the first day of October, A. D. 1884, Powers of Court.  
 the Supreme Court or a majority of the Judges present at any meeting for that purpose held, may annul, or alter and amend, any Rule or Rules of Court for the time being in force, and make any further or additional Rules of Court for carrying this Act into effect, and in particular for all Court or majority of Judges to make rules regulating procedure  
 or any of the matters mentioned in the sub-sections to this section, namely:

(1.) For regulating the sittings of the said Supreme Sittings.  
 Court and of the Judges of the said Supreme Court in Chambers.

(2.) For regulating the pleading, practice and procedure Pleadings, &c.  
 in the said Supreme Court, and the Rules of Law which are to prevail in relation to remedies in causes and proceedings therein.

(3.) For the hearing of appeals and all matters relating Appeals, certiorari, &c.  
 to or brought up by Writs of Certiorari from County Courts, or a Judge of a County Court, from Courts of Probate or Surrogate Courts, or from any other Courts or officers, and for the hearing and arguments of rules *nisi*, or appeals from any one of the Judges of the Supreme Court, sitting for the trial of causes, or the transaction of any other business in Halifax or on circuit; and for regulating the selection of the Judges of the Supreme Court, who shall hear such arguments on appeals, or rules *nisi*, and for regulating all matters relating to the practice on such arguments; and the Prothonotary in making up the docket of causes for argument before the Supreme Court at Halifax, shall so arrange them, that all causes coming from the same county shall be grouped together on the docket so that they may be heard in succession in such order so far as the different counties are concerned, as the Judges shall by Rule or Order direct.

## CHAP. 104.

Generally.

(4.) Generally, for regulating any matter relating to the practice and procedure of the said Supreme Court, or to the duties of the officers thereof, or to the costs of proceedings, and every other matter deemed expedient for the better attaining the ends of justice, advancing the remedies of suitors, and carrying into effect the provisions of this Act, and of all other Acts now or hereafter in force respecting the said Court.

Rules to have force after publication in *Royal Gazette*.

35. All Rules of Court made in pursuance of this Act, on or after the first day of October, A. D. 1884, shall, from and after the publication thereof in the *Royal Gazette*, regulate all matters to which they extend, until annulled or altered in pursuance of this Act.

Judges to continue to have power to make Rules.

36. Subject to any Rules of Court which may be made under the preceding provisions of this Act, the Judges of the said Supreme Court shall continue to have and exercise all the powers which immediately preceding the nineteenth day of April, A. D. 1884, they possessed or exercised as to making Rules of Court for the regulation of the practice of the said Supreme Court.

Rules of Court may modify statutes in certain cases.

37. Where any provisions in respect of the Supreme Court are contained in any statute, Rules of Court may be made for modifying such provisions to any extent that may be deemed necessary for adapting the same to the practice and procedure of the said Supreme Court, unless, in the case of any Act hereafter passed, this power shall be expressly excluded with respect to such Act or any provision thereof.

Provisions relating to payment into or out of Court.

38. Any provisions relating to the payment, transfer or deposit, into, or in, or out of, any Court, of any money or property, or the dealing therewith, shall be deemed to be provisions relating to practice and procedure.

Officers of Court, their duties regulated by Rules of Court, &c.

39. Subject to any Order in that behalf, the business to be performed in the said Supreme Court or in the Chambers of any Judge thereof, other than that performed by the Judges, shall be distributed among the several officers attached to the said Court, in such manner as may be directed by Rules of Court; and such officers shall perform such duties in relation to such business as may be directed by Rules of Court; and subject to such Rules of Court, all such officers respectively shall continue to perform the same duties, as nearly as may be, and in the same manner as if this Act had not passed.

Official referees.

40. Subject to Rules of Court the Judges of the County Courts, masters in Chancery, prothonotaries, and clerks of the Crown shall be official referees for the trial of such questions as shall be directed to be tried by said officers,

and the Lieutenant-Governor-in-Council may, if necessary, CHAP. 104.  
appoint other and additional official referees.

41. Every stamp affixed to any matter or proceeding under the authority of the Revised Statutes, or any Act of the Provincial Legislature respecting law stamps, shall be cancelled, as by law provided, unless otherwise provided by Rules of Court. Stamps, cancellation.

42. All Rules of Court, made in pursuance of this Act, shall be laid before the House of Assembly and Legislative Council of the Province of Nova Scotia, within twenty days next after the same are made, if the Legislature is then sitting, or if not, within twenty days after the then next meeting of the Legislature; and if an address is presented to the Lieutenant-Governor by either of the said Houses within the next subsequent twenty days on which the said House shall have sat, praying that any such Rules may be cancelled, the Lieutenant-Governor may thereupon, by Order-in-Council, annul the same, and the Rules so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same. Rules of Court to be laid before Legislature.

#### COUNTY COURTS AND JUDGES.

43. When in any proceeding before any County Court any defence or counter-claim of the defendant involves matter beyond the jurisdiction of the Court, such defence or counter-claim shall not affect the competence or the duty of the Court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the Court has jurisdiction to administer shall be given to the defendant upon any such counter-claim. Provided always that in such case it shall be lawful for the Supreme Court or any Judge thereof if it shall be thought fit, on the application of any party to the proceeding, to order that the whole proceeding be transferred from such Court to the Supreme Court; and in such case the record in such proceeding shall be transmitted by the clerk or other proper officers of the County Court to the said Supreme Court, and the same shall thenceforth be continued and prosecuted in the said Supreme Court as if it had been originally commenced therein. Provisions in case defence or counter claim is beyond the jurisdiction of the County Court. Supreme Court may order proceedings to be transferred to the Supreme Court.

44. The practice and procedure of the said Supreme Court shall be, wherever applicable, the practice and procedure of the County Courts; and the Rules of Law enacted and declared by this Act, shall be in force and receive effect in all Courts whatsoever in the Province of Practice and procedure of Supreme Court to be practice and procedure of County Courts.

CHAP. 104. Nova Scotia (except the Court of Probate and Surrogate Courts therein,) so far as the matters to which such rules relate shall be respectively cognizable by such Courts.

Provisions of Caps. 89, 94 and 95 of R. S., 4th series; to remain in force until abrogated, repealed or amended by Rules made under this Act.

45. Notwithstanding any enactment of the first session of the Legislature held in the year 1884 otherwise than is contained in this Act, the provisions of Chapter 89 of the Revised Statutes, fourth series, "Of the Supreme Court and its Officers," and of Chapter 94 of the said Revised Statutes, "Of pleadings and Practice in the Supreme Court," and of Chapter 95 of the said Revised Statutes, "Of Procedure in Equity," as amended by Acts in amendment thereof, and any other Act of the Legislature the provisions of which are affected by this Act, shall remain in force and effect, (except in so far as said provisions are altered by this Act), until the same may be abrogated, repealed, or amended by Rules which may be made under the authority of this Act, and it is hereby declared and enacted that the authority to make Rules as hereinbefore conferred extends (subject to all the provisions of this Act), to the abrogation, repeal, or amendment of all or any of the provisions of the said Chapters.

Provisions of the Act and Rules, to be preferred in construction.

46. Whenever any of the provisions contained in this Act shall appear to be inconsistent with any other enactment of the first session of the Legislature held in the year 1884, the provisions of this Act shall be preferred in construction, and for purposes of construction in such cases this Act shall be deemed to have been enacted at a time subsequent to that at which all other statutes of the said session were passed; and every provision of this Act and of the schedule of Rules hereto, shall be deemed remedial, and shall receive such fair, large, and liberal construction and interpretation as will best ensure the attainment of the objects of the Act and of said provisions according to their true intent, meaning and spirit.

#### INTERPRETATION

47. In the construction of this Act, and of the Rules, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned shall have or include the meanings following, that is to say :

- (1.) "Rules" shall include "Rules of Court," and both shall include Forms.
- (2.) "Cause" shall include any action, suit, or other original proceeding between a plaintiff and a defendant.
- (3.) "Suit" shall include action.

(4.) "Action" shall mean a civil proceeding commenced CHAP. 104. by writ, or in such other manner as may be prescribed by Rules of Court; but shall not include a criminal proceeding by the Crown.

(5.) "Plaintiff" shall include every person asking any relief, (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons, or otherwise.

(6.) "Petitioner" shall include every person making any application to the Court, either by petition, motion, or summons, otherwise than as against any defendant.

(7.) "Defendant" shall include every person served with any writ of summons or process, or served with notice of, or entitled to attend, any proceedings.

(8.) "Party" shall include every person served with notice of, or attending, any proceeding, although not named on the record; and includes a body corporate or politic.

(9.) "Matter" shall include every proceeding in the Court, not in a cause.

(10.) "Pleading" shall include every petition or summons, and shall also include the statement in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant.

(11.) "Judgment" shall include decree.

(12.) "Order" shall include rule.

(13.) "Oath" shall include solemn affirmation and statutory declaration.

(14.) "Existing" shall mean existing at the commencement of the first day of October, A. D. 1884.

(15.) The words "this Act" or "the Act," wherever used in this Chapter, shall mean the portion of this Chapter preceding this sub-section.

## SCHEDULE.

(NOTE.—The memorandum at the end of each Rule is intended to indicate the Rule or enactment from which the Rule, as herein expressed, has been transcribed or adapted.

"E." refers to the English Judicature Rules of 1833.

"O." refers to the Ontario Judicature Rules of 1881.

"S. C. A." refers to Cap. 89, R. S., 4th Series, "Of the Supreme Court and its Officers."

"P. A." refers to the Practice Act, Cap. 94, R. S., 4th Series.

"E. A." refers to the Equity Act, Cap. 95, R. S., 4th Series.

Some of the provisions which are quoted as taken from the English Code were also in the Practice Act, but no more than the one reference has been deemed necessary.)

## THE RULES OF THE SUPREME COURT, 1884.

The Judges of the Supreme Court of Nova Scotia do hereby, in pursuance and execution of the powers and authorities enabling them in that behalf, order and direct in manner following:—

Title, date and application.

*First*:—The following Orders and Rules may be cited as "The Rules of the Supreme Court, 1884. They shall be in operation on and after the second day of October, 1884, and shall also apply, so far as may be practicable (unless otherwise expressly provided,) to all proceedings taken on or after that day in all causes and matters then pending.

Repeal.

*Second*:—The Orders and Rules mentioned in Appendix O. hereto are hereby annulled, and the enactments mentioned in said Appendix O. are hereby abrogated and repealed, and the following Orders and Rules shall stand in lieu thereof.

**Order I.**  
**RT. 1, 2.**

## ORDER I.

## FORM AND COMMENCEMENT OF ACTION.

(1.)  
Action.

1. All actions and suits which, previously to the first day of October, A. D., 1884, were commenced by writ, bill, or information in the Supreme Court, shall be instituted in the said Court by a proceeding to be called an action. (E. 1.)

(2.)  
Other proceedings.

2. All other proceedings in, and applications to the Supreme Court may, subject to these Rules, be taken and made in the same manner as they would have been taken and made if the Act had not been passed. (E. 2.)

ORDER II

Order II.  
IT. 1-6.

WRIT OF SUMMONS AND PROCEDURE RELATING THERETO.

1. Every action in the Supreme Court shall be commenced by a Writ of Summons, which shall be indorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action. (E. 3.)

(3.)  
Summons.

2. Any costs occasioned by the use of any forms of writs and of indorsements thereon, other or more prolix than the forms hereinafter prescribed, shall be borne by the party using the same, unless the Court or a Judge shall otherwise direct. (E. 4.)

(4.)  
Costs of improper forms.

3. The Writ of Summons for the commencement of an action shall, except in the cases in which any different form is hereinafter provided, be in one of the Forms Nos. 1 and 2 in Appendix A, Part I, with such variations as circumstances may require. (E. 5.)

(5.)  
Forms of writ.

4. No Writ of Summons for service out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be issued without the leave of the Court or a Judge. (E. 6.)

(6.)  
Writ and notice for service out of the jurisdiction.

5. A Writ of Summons to be served out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be in one of the Forms Nos. 3 and 4 in Appendix A, Part I, with such variations as circumstances may require. Such notice shall be in Form No. 5 in the same Part, with such variations as circumstances may require. (E. 7.)

(7.)  
Forms of such writ and notice.

6. Every Writ of Summons and also (unless by any Statute or by these Rules it is otherwise provided), every other writ shall bear date on the day on which the same shall be issued. The teste of all writs shall remain abolished. (E. 10.)

(8.)  
Date and teste of writs.

ORDER III.

Order III.  
IT. 1-3.

INDORSEMENTS OF CLAIM.

1. The Indorsement of Claim shall be made on every Writ of Summons before it is issued. (E. 11.)

(9.)  
When made.

2. In the indorsement required by Order II, Rule 1, it shall not be essential to set forth the precise ground of complaint, or the precise remedy or relief to which the plaintiff considers himself entitled. (E. 12.)

(10.)  
Precise statement not essential.

3. The Indorsement of Claim shall be to the effect of such of the Forms in Part III. of Appendix A. hereto as shall be applicable to the case, or if none be found applicable then of such other similarly concise form as the nature of the case may require. (E. 13.)

(11.)  
Form of indorsement.



Order III  
 IT. 4-7.

(12.)  
 Where action is  
 in representative  
 capacity.

4. If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, the indorsement shall show in manner appearing by such of the Forms in Appendix A, Part III., Section V., as shall be applicable to the case, or by any other statement to the like effect, in what capacity the plaintiff or defendant sues or is sued. (E. 14.)

(13.)  
 Special indorse-  
 ment.

5. In all actions where the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising (A.) upon a contract express or implied, (as for instance on a bill of exchange, promissory note, a check, or other simple contract debt); or (B.) on a bond or contract under seal for payment of a liquidated amount of money; or (C.) on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or (D.) on a guaranty, whether under seal or not, where the claim against the principal is in respect of a debt or liquidated demand only; or (E.) on a trust; or (F.) in actions for the recovery of land, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or against persons claiming under such tenant; the writ of summons may, at the option of the plaintiff, be specially indorsed with a statement of his claim, or of the remedy or relief to which he claims to be entitled. Such special indorsement shall be to the effect of such of the Forms in Appendix C, Section III., as shall be applicable to the case. (E. 16.)

(14.)  
 Indorsement for  
 liquidated de-  
 mand.

6. Wherever the plaintiff's claim is for a debt or liquidated demand only, the indorsement, besides stating the nature of the claim, shall state the amount claimed for debt, or in respect of such demand, and for costs, respectively, and shall further state that upon payment thereof within six days after service, or, in case of a writ not for service within the jurisdiction, within the time allowed for appearance, further proceedings will be stayed. Such statement shall be in the form in Appendix A hereto, Part III., Sec. III. The defendant may, notwithstanding such payment, have the costs taxed, and if more than one sixth shall be disallowed the plaintiff's solicitor shall pay the costs of taxation. (E. 17.)

(15.)  
 Indorsement for  
 account.

7. In all cases in which the plaintiff, in the first instance, desires to have an account taken, the writ of summons shall be indorsed with a claim that such account be taken. (E. 18.)

ORDER IV.

INDORSEMENT OF ADDRESS.

Order IV.  
rr. 1-3.

1. The solicitor of a plaintiff, suing by a solicitor, shall indorse on the writ, and notice in lieu of service of a writ, the address of the plaintiff, and also his own name or firm and place of business (within the jurisdiction), which latter address shall be the place where writs, notices, petitions, orders, and other documents, proceedings, and written communications may be left for him. (E. 19.) (16.)  
Address of solicitor and plaintiff.
2. Where a plaintiff sues in person he shall indorse on the writ of summons, or notice in lieu of service of a writ of summons, his occupation and place of residence, and, if his place of residence be not within the jurisdiction, another place within the jurisdiction to be called his address for service, where writs, notices, pleadings, petitions, orders, summonses, and other documents, proceedings, and written communications may be left for him. (E. 20.) (17.)  
Address of plaintiff suing in person.
3. In all cases where proceedings are commenced otherwise than by writ of summons, the preceding Rules of this Order shall apply to the documents by which such proceedings shall be originated as if it were a writ of summons. (E. 22.) (18.)  
Indorsement where no writ issued.

ORDER V.

ISSUE OF WRITS OF SUMMONS.

Order V.  
rr. 1-6.

1. In any action the plaintiff, wherever resident, may issue a writ of summons in any county. (E. 23.) (19.)  
Writs issued in any County.
2. Every writ of summons shall be issued out of the office of one of the Prothonotaries. (E. 24.) (20.)  
Issued by Prothonotary.
3. Writs of summons shall be prepared by the plaintiff or his solicitor, and may be written or printed, or partly written and partly printed. (E. 32.) (21.)  
Writs, how prepared.
4. Every writ of summons shall be sealed by the officer issuing the same, and shall thereupon be deemed to be issued. (E. 33.) (22.)  
To be sealed.
5. The plaintiff or his solicitor shall, on presenting any writ of summons for sealing, leave with the officer a copy written or printed, or partly written and partly printed, of such writ and of all the indorsements thereon, and such copy shall be signed by or for the solicitor leaving the same, or by the plaintiff himself if he sues in person. (E. 34.) (23.)  
Copy to file.
6. The Prothonotary on receiving such copy shall file the same, and an entry of the filing thereof shall be made in a book to be called the Cause Book, which is to be kept (24.)  
Copy to be filed—entries to be made in Cause Book.

Order V.  
r. 6.

in the manner in which the like book was kept on the first day of October, A. D. 1884; and the action shall be distinguished by the date of the year, and a letter and number, as nearly as may be in the manner in which causes were distinguished in such book on that date. (E. 35.)

Order VI.  
rr. 1, 2.

## ORDER VI.

## CONCURRENT WRITS.

(25.)  
How issued.

1. The plaintiff in any action may, at the time of, or at any time during twelve months after, the issuing of the original writ of summons, issue one or more concurrent writ or writs, each concurrent writ to shew the date of the original writ, and be marked with the word "concurrent" in the margin, and the date of issuing the concurrent writ: Provided always, that such concurrent writ or writs shall only be in force for the period during which the original writ in such actions shall be in force. (E. 40.)

(26.)  
Writs for service  
abroad and with-  
in Province may  
be concurrent.

2. A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service, or whereof notice in lieu of service is to be given, out of the jurisdiction; and a writ for service, or whereof notice in lieu of service is to be given, out of the jurisdiction, may be issued and marked as a concurrent writ with one for service within the jurisdiction. (E. 41.)

Order VII.  
rr. 1, 2.

## ORDER VII.

## DISCLOSURE BY SOLICITORS AND PLAINTIFFS.

(27.)  
By plaintiff's  
solicitor.

1. Every solicitor whose name shall be indorsed on any writ of summons shall, on demand in writing made by or on behalf of any defendant who has been served therewith or has appeared thereto, declare forthwith in writing whether such writ has been issued by him or with his authority or privity; and if such solicitor shall declare that the writ was not issued by him or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the Court or a Judge. (E. 42.)

(28.)  
In cases of part-  
nership.

2. Where a writ is sued out by partners in the name of their firm, the plaintiffs or their solicitors shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the action is brought; and if the plaintiffs or their

solicitors shall fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the Court or a Judge may direct. And when the names of the partners are so declared, the action shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as the plaintiffs in the writ. But all proceedings shall, nevertheless, continue in the name of the firm. (E. 43.)

Order VII.

r. 2.

ORDER VIII.

RENEWAL OF WRIT.

Order VIII.

rr. 1-3.

1. No original writ of summons shall be in force for more than twelve months from the day of the date thereof including the day of such date; but if any defendant therein named shall not have been served therewith, the plaintiff may, before the expiration of the twelve months, apply to the Court or a Judge for leave to renew the writ; and the Court or Judge, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the original or concurrent writ of summons be renewed for six months from the date of such renewal inclusive, and so from time to time during the currency of the renewed writ; and the writ shall in such case be renewed by being marked with the day, month and year of such renewal; such renewal to be so marked by the Prothonotary, upon delivery to him by the plaintiff or his solicitor of a memorandum in Form No. 6, in Appendix A., Part I, with such variations as circumstances may require; and a writ of summons so renewed shall remain in force and be available, to prevent the operation of any statute, whereby the time for the commencement of the action may be limited, and for all other purposes, from the date of the issuing of the original writ of summons. (E. 45.)

(29.)  
Currency of writ.  
Renewal.

2. The production of a writ of summons purporting to have been renewed in manner aforesaid, shall be sufficient evidence of the writ having been so renewed, and of the commencement of the action as of the first date of such renewed writ for all purposes. (E. 46.)

(30.)  
Evidence of renewal.

3. Where a writ, of which the production is necessary, has been lost, the Court or a Judge, upon being satisfied of the loss and of the correctness of a copy thereof, may order that such copy shall be sealed and served in lieu of the original writ. (E. 47.)

(31.)  
Substitution for lost writ.

Order IX.  
 IT. 1-7.

## ORDER IX.

## SERVICE OF WRIT OF SUMMONS.

*1.—Mode of Service.*

(32.)  
 When accepted.

1. No service of writ shall be required when the defendant, by his solicitor, undertakes in writing to accept service and enters an appearance. (E. 48.)

(33.)  
 Service as at present.  
 Substituted service.

2. When service is required the writ shall, wherever it is practicable, be served by the person by whom, and in the manner in which, personal service was made, immediately preceding the first day of October, A. D. 1884; but if it be made to appear to the Court or a Judge on affidavit that the plaintiff is from any cause unable to effect prompt personal service, the Court or Judge may make such order for substituted or other service, or for the substitution for service of notice, by advertisement or otherwise, as may seem just. (E. 49.)

*2.—On Particular Defendants.*

(34.)  
 Husband and wife to be served.

3. When husband and wife are both defendants to the action, they shall both be served unless the Court or a Judge shall otherwise order. (E. 50.)

(35.)  
 Infant.

4. When an infant is a defendant to the action, service on his father or guardian or person appointed by the Court shall be deemed good service on the infant unless the Court or a Judge otherwise order: Provided that the Court or Judge may order that service made or to be made on the infant shall be deemed good service. (E. 51.)

(36.)  
 Lunatic.

5. Where a lunatic or person of unsound mind, not so found by inquisition or judicial declaration, is a defendant to the action, service on his guardian or person to be appointed by the Court as guardian *ad litem* of the lunatic shall, unless the Court or Judge otherwise order, be deemed good service on such defendant. (E. 52 and O. 38, 39.)

*3.—On Partners and other Bodies.*

(37.)  
 On any partner or agent.

6. Where persons are sued as partners in the name of their firm, the writ shall be served either upon any one or more of the partners, or, at the principal place, within the jurisdiction, of the business of the partnership, upon any person having at the time of service the control or management of the partnership business there; and, subject to these Rules, such service shall be deemed good service upon the firm. (E. 53.)

(38.)  
 At place of business.

7. Where one person carrying on business in the name of a firm, apparently consisting of more than one person, shall be sued in the firm name, the writ may be served at

the principal place, within the jurisdiction, of the business so carried on, upon any person having, at the time of service, the control or management of the business there; and, such service, if sufficient in other respects, shall be deemed good service on the person so sued. (E. 54.)

Order IX.  
rr. 8—10.

8. Where, by any statute, provision is made for service of any writ of summons, bill, petition or other process upon any corporation, or any society or fellowship, or any body or number of persons whether corporate or otherwise, every writ of summons may be served in the manner so provided. Otherwise the same may be served on the principal officer, or on the clerk or secretary. (E. 55 and P. A. 41.)

(39.)  
Corporations.

*4.—In Particular Actions.*

9. Service of a writ of summons in an action to recover land, may, in case of vacant possession, when it cannot otherwise be effected, be made by posting a copy of the writ upon the door of the dwelling house or other conspicuous part of the property. (E. 56.)

(40.)  
Vacant possession.

*5.—Generally.*

10. The person serving a writ of summons shall immediately on receiving the writ, indorse thereon the day of the month and week of the receipt of the same, and shall, within three days at most after service, indorse thereon the day of the month and week of the service thereof. Every affidavit of service of such writ shall mention the day on which indorsement was made. This rule shall apply to substituted as well as other service. (E. 62 and P. A. 39.)

(41.)  
Indorsement of date of receipt and of service.

ORDER X.

Order X.

SUBSTITUTED SERVICE.

Every application to the Court or a Judge for an order for substituted or other service, or for the substitution of notice for service, shall be supported by an affidavit setting forth the grounds on which the application is made. (E. 63.)

(42.)  
Affidavit to set forth grounds.

## Order XI.

## IT. 1, 2.

## ORDER XI.

## SERVICE OUT OF THE JURISDICTION.

(43.)  
In what cases.

1. Service out of the jurisdiction of a writ of summons, or notice of a writ of summons, may be allowed by the Court or a Judge whenever—

- (a.) The whole subject-matter of the action is land situate within the jurisdiction (with or without rents or profits); or
- (b.) Any act, deed, will, contract, obligation, or liability affecting land or hereditaments, situate within the jurisdiction, is sought to be construed, rectified, set aside, or enforced in the action; or
- (c.) Any relief is sought against any person domiciled, or ordinarily resident, within the jurisdiction; or
- (d.) The action is for the administration of the personal estate of any deceased person who, at the time of his death was domiciled within the jurisdiction, or for the execution, as to property situate within the jurisdiction, of the trusts of any written instrument, of which the person to be served is a trustee, which ought to be executed according to the law of Nova Scotia; or
- (e.) The action is founded on any breach, or alleged breach, within the jurisdiction, of any contract wherever made, which, according to the terms thereof, ought to be performed within the jurisdiction; or
- (f.) Any injunction is sought as to anything to be done within the jurisdiction, or any nuisance within the jurisdiction is sought to be prevented or removed, whether damages are or are not also sought in respect thereof; or
- (g.) Any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction. (E. 64.)

(44.)  
Affidavit re-  
quired.

2. Every application for leave to serve such writ or notice on a defendant out of the jurisdiction shall be supported by affidavit, or other evidence, stating that in the belief of the deponent the plaintiff has a good cause of action, and shewing in what place or country such defendant is or probably may be found, and whether such defendant is a British subject or not, and the grounds upon

which the application is made; and no such leave shall be granted unless it shall be made sufficiently to appear to the Court or Judge that the case is a proper one for service out of the jurisdiction under this Order. (E. 67.)

Order XI.  
rr. 3-5.

3. Any order giving leave to effect such service or give such notice shall limit a time after such service or notice, within which such defendant is to enter an appearance, such time to depend on the place or country where or within which the writ is to be served or the notice given. (E. 68.)

(45.)  
Time for appearance.

4. When the defendant is neither a British subject, nor in British dominions, notice of the writ, and not the writ itself, is to be served upon him. (E. 69.)

(46.)  
When notice only to be served

5. Notice in lieu of service shall be given in the manner (as nearly as may be), in which writs of summons are served. (E. 70.)

(47.)  
Notice, how served.

ORDER XII.

Order XII.  
rr. 1-3.

APPEARANCE.

1. In all cases the writ of summons shall name, in the memorandum to be subscribed thereon, the county in which the defendant's appearance is to be entered.

(48.)  
Notice when to appear.

2. A defendant shall enter his appearance to a writ of summons by delivering to the proper officer a memorandum in writing, dated on the day of its delivery, and containing the name of the defendant's solicitor, or stating that the defendant defends in person. He shall, at the same time, deliver to the officer a duplicate of the memorandum, which the officer shall seal with the official seal, showing the date on which it is sealed, and then return it to the person entering the appearance, and the duplicate memorandum so sealed shall be a certificate that the appearance was entered on the day indicated by the seal. (E. 78.)

(49.)  
How appearance entered.

3. A defendant shall, on the day on which he enters an appearance to a writ of summons, give notice of his appearance (Form No. 2 in Part II., Appendix A) to the plaintiff's solicitor, or if the plaintiff sues in person, to the plaintiff himself. The notice may be given either by notice in writing served in the ordinary way on plaintiff's solicitor, or at the address for service, or by prepaid letter directed to that address and posted on the day of entering appearance in due course of post, and shall in either case be accompanied by the sealed duplicate memorandum. (E. 79.)

(50.)  
Notice of appearance.



- Order XII.  
rr. 4-13.
- (51.)  
Address. 4. A defendant appearing in person shall state in such memorandum his address. The solicitor of a defendant appearing by a solicitor, shall state in such memorandum his address. The address so stated shall be the address for service. (E. 80, 81.)
- (52.)  
Defective address. 5. If the memorandum does not contain the address required by the preceding Rule, the memorandum shall not be received; and if such an address shall be illusory or fictitious, the appearance may be set aside by the Court or a Judge on the application of the plaintiff; and the plaintiff may be permitted by the Court or Judge to proceed by posting up the proceedings in the office from whence the writ was issued. (E. 82.)
- (53.)  
Form. 6. The Memorandum of Appearance may be in the Form No. 1, Appendix A., Part II., with such variations as the circumstances of the case may require. (E. 83.)
- (54.)  
Entry in Cause Book. 7. Upon receipt of a Memorandum of Appearance, the officer shall forthwith enter the appearance in the Cause Book. (E. 84.)
- (55.)  
Appearance by partners. 8. When persons are sued as partners in the name of their firm, they shall appear individually in their own names; but all subsequent proceedings shall nevertheless continue in the name of the firm. (E. 85.)
- (56.)  
Person sued under firm name. 9. Where any person carrying on business in the name of a firm apparently consisting of more than one person shall be sued in the name of the firm, he shall appear in his own name; but all subsequent proceedings shall nevertheless continue in the name of the firm. (E. 86.)
- (57.)  
Two or more defendants. 10. If two or more defendants in the same action shall appear by the same solicitor and at the same time, the names of all the defendants so appearing shall be inserted in one memorandum. (E. 87.)
- (58.)  
Undertaking to appear. 11. A solicitor not entering an appearance in pursuance of his written undertaking so to do, shall be liable to an attachment. (E. 88.)
- (59.)  
Appearance any time before judgment. 12. A defendant may appear at any time before judgment. If he appear at any time after the time limited by the writ for appearance he shall not, unless the Court or a Judge shall otherwise order, be entitled to any further time for delivering his defence, or for any other purpose, than if he had appeared according to the writ. (E. 92.)
- (60.)  
Appearance by person not defending. 13. Any person not named as a defendant in any writ of summons for the recovery of land may, by leave of the Court or a Judge, appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or by his tenant. (E. 95.)

14. Any person appearing to defend an action for the recovery of land as landlord, in respect of property whereof he is in possession only by his tenant, shall state in his appearance that he appears as landlord. (E. 96.)

Order XII.  
rr. 14—18.  
(61.)  
Appearance by  
landlord so to  
state.

15. Where a person not named as defendant in any writ of summons for the recovery of land has obtained leave of the Court or a Judge to appear and defend, he shall enter an appearance, according to the foregoing Rules of this Order, intituled in the action against the party named in the writ as defendant, and shall forthwith give notice of such appearance to the plaintiff's solicitor, or to the plaintiff if he sues in person, and shall in all subsequent proceedings be named as a party defendant to the action. (E. 97.)

(62.)  
By person not  
named as de-  
fendant.

16. Any person appearing to a writ of summons for the recovery of land shall be at liberty to limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in his memorandum of appearance, or in a notice intituled in the action and signed by him or his solicitors. Such notice shall be served within four days after appearance; and an appearance where the defence is not so limited shall be deemed an appearance to defend for the whole. (E. 98.)

(63.)  
Defence as to  
part.

17. The notice mentioned in the last preceding Rule shall be in the Form No. 3, Appendix A, Part II., with such variations as circumstances may require. (E. 99.)

(64.)  
Form.

18. A defendant before appearing shall be at liberty, without obtaining an order to enter or entering a conditional appearance, to serve notice of motion to set aside the service upon him of the writ or of notice of the writ, or to discharge the order authorizing such service. (E. 100.)

(65.)  
Notice of motion  
to set aside pro-  
ceedings.

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ORDER XIII.

DEFAULT OF APPEARANCE.

Order XIII.  
r. 1.

1. Where no appearance has been entered to a writ of summons for a defendant who is an infant, or to a person of unsound mind not so found by judicial decision or inquisition, the plaintiff shall, before further proceeding with the action, apply to the Court or a Judge for an order that some proper person be assigned guardian of such defendant, by whom he may appear and defend the action. But no such order shall be made unless it appears on the hearing of such application that the writ of summons was duly served, and that notice of such application was, after the expiration of the time allowed for appearance, and at least six clear days before the day in such notice named for hear-

(66.)  
By person under  
disability.

Order XIII.  
rr. 2-6.

ing the application, served upon, or left at the dwelling house of, the person with whom or under whose care such defendant was at the time of serving such writ of summons, and also (in the case of such defendant being an infant not residing with or under the care of his father or guardian), served upon or left at the dwelling house of the father or guardian, if any, of such infant, unless the Court or Judge at the time of hearing such application shall dispense with such last mentioned service. (E. 101.)

(67.)  
Affidavit of service.

2. Where any defendant fails to appear to a writ of summons of which notice has been served in lieu of service of the writ, and the plaintiff is desirous of proceeding upon default of appearance under any of the following Rules of this Order, or under Order XV., Rule 1, he shall, before taking such proceeding upon default, file an affidavit of service, or of notice in lieu of service, as the case may be. (E. 102.)

(68.)  
Judgment entered if writ indorsed.

3. Where the writ of summons is indorsed for a liquidated demand, whether specially or otherwise, and the defendant fails, or all the defendants, if more than one, fail to appear thereto, the plaintiff may enter final judgment for any sum not exceeding the sum indorsed on the writ, together with interest at the rate specified (if any), or (if no rate be specified) at the rate of six per cent. per annum, to the date of the judgment and costs. (E. 103.)

(69.)  
When several defendants.

4. Where the writ of summons is indorsed for a liquidated demand, whether specially or otherwise, and there are several defendants, of whom one or more appear to the writ, and another or others of them fail to appear, the plaintiff may enter final judgment, as in the preceding Rule, against such as have not appeared, and may issue execution upon such judgment without prejudice to his right to proceed with the action against such as have appeared. (E. 104.)

(70.)  
On claim for detention.

5. Where the writ is indorsed with a claim for detention of goods and pecuniary damages, or either of them, and the defendant fails, or all the defendants if more than one fail, to appear, the plaintiff may enter interlocutory judgment, and a writ of inquiry shall issue to assess the value of the goods and the damages, or the damages only, as the case may be, in respect of the causes of action disclosed by the indorsement on the writ of summons. But the Court or a Judge may order that, instead of a writ of inquiry, the value and amount of damages, or either of them, shall be ascertained in any way which the Court or Judge may direct. (E. 105.)

(71.)  
Where several defendants.

6. Where the writ is indorsed as in the last preceding Rule mentioned, and there are several defendants, of whom

one or more appear to the writ, and another or others of them fail to appear, the plaintiff may sign interlocutory judgment against the defendant or defendants so failing to appear, and the value of the goods and the damages, or either of them, as the case may be, may be assessed, as against the defendant or defendants suffering judgment by default, at the same time as the trial of the action or issue therein against the other defendant or defendants, unless the Court or a Judge shall otherwise direct. Provided that the Court or a Judge may order that instead of a writ of inquiry or trial, the value and amount of damages, or either of them, shall be ascertained in any way which the Court or Judge may direct. (E. 106.)

Order XIII.  
rr. 7-11.

7. Where the writ is indorsed with a claim for detention of goods and pecuniary damages, or either of them, and is further indorsed for a liquidated demand, whether specially or otherwise, and any defendant fails to appear to the writ, the plaintiff may enter final judgment for the debt or liquidated demand interest and costs against the defendant or defendants failing to appear, and interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be, and proceed as mentioned in such of the preceding Rules of this Order as may be applicable. (E. 107.)

(72.)  
Claim for damages and liquidated demand.

8. In case no appearance shall be entered in an action for the recovery of land, within the time limited for appearance, or if an appearance be entered but the defence be limited to part only, the plaintiff shall be at liberty to enter a judgment that the person whose title is asserted in the writ shall recover possession of the land, or of the part thereof to which the defence does not apply. (E. 108.)

(73.)  
Action for land.

9. Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, or damages for breach of contract, upon a writ for the recovery of land, he may enter judgment as in the last preceding Rule mentioned, for the land; and may proceed as in the last preceding Rules of this Order mentioned, as to such other claim so indorsed. (E. 109.)

(74.)  
Mesne profits and damages, &c.

10. Where judgment is entered pursuant to any of the preceding Rules of this Order, it shall be lawful for the Court or a Judge to set aside or vary such judgment upon such terms as may be just. (E. 110.)

(75.)  
Setting aside judgment.

11. Where the action is in respect of a mortgage, and the plaintiff claims foreclosure or sale, or redemption, or where the action is for the administration of an estate, or for a partition, the plaintiff shall be entitled to a judgment on such evidence (if any) and in such cases (as nearly as may be), as provided for by the practice immediately preceding the first day of October, A. D. 1884, relative thereto. (O. 78.)

(76.)  
Foreclosure, partition, administration, &c.

**Order XIII.**  
**rr. 12, 13.**

(77.)  
Notice in such cases.

12. Where the action is for the foreclosure or redemption of a mortgage, or sale of mortgaged premises, if the plaintiff is not entitled to a judgment or would not according to the practice immediately preceding the first day of October, A. D. 1884, be entitled to such a judgment or order as he desires, he shall be entitled to the proper judgment or order, on notice or otherwise, according to the said practice where a cause is heard on an order to take the Bill *pro confesso* or otherwise. (O. 79.)

(78.)  
In other cases action may proceed.

13. In all actions not by the Rules of this Order otherwise specially provided for, in case the party served with the writ does not appear within the time limited for appearance, upon the filing by the plaintiff of a proper affidavit of service, and, if the writ is not specially indorsed under Order III., Rule 5, of a statement of claim, the action may proceed as if such party had appeared, subject, as to actions where an account is claimed, to the provisions of Order XV. (E. 112.)

**Order XIV.**  
**rr. 1—3.**

**ORDER XIV.**

LEAVE TO SIGN JUDGMENT AND DEFEND WHERE WRIT SPECIALLY INDORSED.

(79.)  
Application for judgment.

1. Where the defendant appears to a writ of summons specially indorsed under Order III., Rule 5, the plaintiff may, on affidavit made by himself, or by any other person who can swear positively to the facts, verifying the cause of action and the amount claimed (if any), and stating that in his belief there is no defence to the action, apply to a Judge for liberty to enter final judgment for the amount so indorsed, together with interest, if any, or for recovery of the land (with or without rent or mesne profits), as the case may be, and costs. The Judge may thereupon, unless the defendant by affidavit or otherwise shall satisfy him that he has a good defence to the action on the merits, or disclose such facts as may be deemed sufficient to entitle him to defend, make an order empowering the plaintiff to enter judgment accordingly. (E. 115.)

(80.)  
Summons to show cause.

2. The application by the plaintiff for leave to enter final judgment under the last preceding Rule shall be made by summons returnable not less than four clear days after service, accompanied by a copy of the affidavit and exhibits referred to therein. (E. 116.)

(81.)  
Showing cause.

3. The defendant may show cause against such application by affidavit, or (except in actions for the recovery of land), by offering to bring into Court the sum indorsed on the writ. Such affidavit shall state whether the defence alleged goes to the whole or to part only, and (if so) to

what part, of the plaintiff's claim. And the Judge may, if he think fit, order the defendant, or in the case of a corporation any officer thereof, to attend and be examined upon oath; or to produce any leases, deeds, books, or documents, or copies of or extracts therefrom. (E. 117.)

Order XIV.  
rr. 4—6.

4. If it appears that the defence set up by the defendant applies only to a part of the plaintiff's claim, or that any part of his claim is admitted, the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to or as is admitted, subject to such terms, if any, as to suspending execution or the payment of the amount levied or any part thereof into Court by the Sheriff, the taxation of costs, or otherwise, as the Judge may think fit. And the defendant may be allowed to defend as to the residue of the plaintiff's claim. (E. 118.)

(82.)  
Defence as to part.

5. If it appears to the Judge that any defendant has a good defence, or ought to be permitted to defend the action, and that any other defendant has not such defence and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff shall be entitled to enter final judgment against the latter, and may issue execution upon such judgment without prejudice to his right to proceed with his action against the former. (E. 119.)

(83.)  
Defence by some defendants.

6. Leave to defend may be given unconditionally, or subject to such terms as to giving security, or time and mode of trial (in cases which, under these Rules, may be tried without a jury) or otherwise, as the Judge may think fit. (E. 120.)

(84.)  
Leave to defend.

ORDER XV.

APPLICATION FOR ACCOUNT.

Order XV.  
rr. 1, 2.

1. Where a writ of summons has been indorsed for an account, under order III., Rule 7, or where the indorsement on a writ of summons involves taking an account, if the defendant either fails to appear, or does not after appearance, by affidavit or otherwise, satisfy the Court or Judge that there is some preliminary question to be tried, an order for the proper accounts, with all necessary inquiries and directions usual in similar cases immediately preceding the first day of October, A. D. 1884, shall be forthwith made. (E. 121.)

(85.)  
Default as to account.

2. An application for such order as mentioned in the last preceding Rule shall be made by summons, and be supported by an affidavit, when necessary, filed on behalf of the plaintiff, stating concisely the grounds of his claim to an account. The application may be made at any time after the time for entering an appearance has expired. (E. 122.)

(86.)  
Summons on affidavit.

Order XVI.  
rr. 1-6.

## ORDER XVI.

## PARTIES.

## 1.—Generally.

(87.)  
Joinder of plain-  
tiff.

1. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist whether jointly, severally, or in the alternative. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who shall not be found entitled to relief, unless the Court or a Judge in disposing of the costs shall otherwise direct. (E. 123.)

(88.)  
Wrong plaintiff  
by mistake.

2. Where an action has been commenced in the name of a wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the Court or a Judge, if satisfied that it has been so commenced through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, may order any other person to be substituted or added as plaintiff, upon such terms as may be just. (E. 124.)

(89.)  
Set-off not affect-  
ed by misjoinder.

3. Where in any action any person has been improperly or unnecessarily joined as a co-plaintiff, and a defendant has set up a counter-claim or set-off, he may obtain the benefit thereof by establishing his set-off or counter-claim as against the parties other than the co-plaintiff so joined, notwithstanding the misjoinder of such plaintiff or any proceeding consequent thereon. (E. 125.)

(90.)  
Joinder of de-  
fendants.

4. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment. (E. 126.)

(91.)  
Defendants not  
interested as to  
all proceedings.

5. It shall not be necessary that every defendant shall be interested as to all the relief prayed for, or as to every cause of action included in any proceeding against him; but the Court or a Judge may make such order as may appear just, to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest. (E. 127.)

(92.)  
All contracting  
parties may be  
joined.

6. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes. (E. 128.)

7. Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as hereinafter mentioned, or as may be prescribed by any special order, join two or more defendants, to the intent that in such action the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties. (E. 129.)

Order XVI.  
rr. 7-11.

(93.)  
Where doubts exist.

8. Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate; and shall be considered as representing such persons; but the Court or a Judge may, at any stage of the proceedings, order any of such persons to be made parties either in addition to or in lieu of the previously existing parties. (E. 130)

(94.)  
Representatives.

9. Where there are numerous persons having the same interest in one cause or matter, one or more of such persons may sue or be sued, or may be authorized by the Court or a Judge to defend, in such cause or matter, on behalf of or for the benefit of all persons so interested. (E. 131.)

(95.)  
Where parties numerous.

10. No cause or matter shall be defeated by reason of the mis-joinder or non-joinder of parties, and the Court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court or a Judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court or a Judge to be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added. No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent in writing thereto. Every party whose name is so added as defendant shall be served with a writ of summons, or notice, in manner hereinafter mentioned, or in such manner as may be prescribed by any special order, and the proceedings as against such party shall be deemed to have begun only on the service of such writ or notice. (E. 133.)

(96.)  
Remedy for non-joinder and mis-joinder.

11. Any application to add, or strike out, or substitute a plaintiff or defendant may be made to the Court or a Judge at any time before trial by motion or summons, or at the trial of the action in a summary manner. (E. 134.)

(97.)  
Application to amend as to parties.



Order XVI.  
rr. 12—18.

(98.)  
Serving new  
defendant with  
writ.

12. Where a defendant is added or substituted, the plaintiff shall, unless otherwise ordered by the Court or a Judge, file an amended copy of and sue out a writ of summons, and serve such new defendant with such writ, or notice in lieu of service thereof, in the same manner as original defendants are served. (E. 135.)

(99.)  
Serving with  
statement of  
claim.

13. If a statement of claim has been delivered previously to such defendant being added, the same shall, unless otherwise ordered by the Court or Judge, be amended in such manner as the making such new defendant a party shall render desirable; and a copy of such amended statement of claim shall be delivered to such new defendant at the time when he is served with the writ of summons or notice, or afterwards within four days after his appearance. (O. 106.)

2.—Partners.

(100.)  
Firm name may  
be used.

14. Any two or more persons claiming or being liable as co-partners may sue or be sued in the name of the respective firms, if any, of which such persons were co-partners at the time of the accruing of the cause of action; and any party to an action may in such case apply by summons to a Judge for a statement of the names of the persons who were, at the time of the accruing of the cause of action, co-partners in any such firm, to be furnished in such manner and verified on oath or otherwise as the Judge may direct. Provided that, in the case of a co-partnership which has been dissolved, to the knowledge of the plaintiff, before the commencement of the action, the writ of summons shall be served upon every person sought to be made liable. (E. 136.)

(101.)  
Even though but  
one person.

15. Any person carrying on business in the name of a firm, apparently consisting of more than one person, may be sued in the name of such firm. (E. 137.)

3.—Persons under disability.

(102.)  
Infants.

16. Infants may sue as plaintiffs by their next friends, in the manner practised before the nineteenth day of April, A. D. 1884; and may in like manner defend by their guardians appointed for that purpose. (E. 138.)

(103.)  
Married women.

17. Married women may sue and be sued as provided by the Married Women's Property Act, 1884. (E. 138.)

(104.)  
Lunatics.

18. Where lunatics and persons of unsound mind, not so found by judicial decision or inquisition, might respectively, immediately preceding the first day of October, A. D. 1884, have sued as plaintiffs, or would have been liable to be sued as

defendants in any action or suit, they may respectively sue as plaintiffs in any action by their guardian, or next friend, according to the practice immediately preceding the said first day of October, except as amended by these Rules, and may in like manner defend any action by their committees or guardians appointed for that purpose. (E. 139.)

Order XVI.  
rr. 19—24.

19. An infant shall not enter an appearance except by his guardian *ad litem*. No order for the appointment of such guardian shall be necessary, but the solicitor applying to enter such appearance, shall make and file an affidavit in the Form No. 8 in Appendix A., Part II., with such variations as circumstances may require. (E. 140.)

(105.)  
Appearance by  
guardian.

20. Every infant served with a petition or notice of motion, or summons in a matter, shall appear on the hearing thereof by a guardian *ad litem* in all cases in which the appointment of a special guardian is not provided for. No order for the appointment of such guardian shall be necessary, but the solicitor by whom he appears shall previously make and file an affidavit as in the last Rule mentioned. (E. 141.)

(106.)  
Order not neces-  
sary.

21. Before the name of any person shall be used in any action as next friend of any infant, or other party, or as relator, such person shall sign a written authority to the solicitor for that purpose, and the authority shall be filed. (E. 142.)

(107.)  
Consent to be  
next friend.

22. In all causes or matters to which any infant or person of unsound mind, whether so found by inquisition or judicial decision or not, or person under any other disability, is a party, any consent as to the mode of taking evidence, or as to any other procedure shall, if given with the consent of the Court or a Judge by the next friend, guardian, committee, or other person acting on behalf of the person under disability, have the same force and effect as if such party were under no disability, and had given such consent. Provided that no such consent by any committee, next friend, or guardian of a lunatic shall be valid as between him and the lunatic unless given with the sanction of the Court or a Judge. (E. 143.)

(108.)  
Consent by next  
friend, &c.

4.—*Proceedings by or against Paupers.*

23. Any person may be admitted in the manner heretofore accustomed to sue or defend as a pauper on proof that he is not worth \$50, his wearing apparel and the subject matter of the cause only excepted. (E. 144.)

(109.)  
Paupers.

24. A person desirous of suing as a pauper shall lay a case before counsel for his opinion whether or not he has reasonable grounds for proceeding. (E. 145.)

(110.)  
Opinion of coun-  
sel.

- Order XVI.  
rr. 25—33.
- (111.)  
Case verified. 25. No person shall be permitted to sue as a pauper, unless the case laid before counsel for his opinion, and his opinion thereon, with an affidavit of the party, or his solicitor, that the case contains a full and true statement of all the material facts to the best of his knowledge and belief, shall be produced before the Court or Judge to whom the application is made; and no fee shall be payable by a pauper to his counsel or solicitor. (E. 146.)
- (112.)  
No court fee. 26. A person admitted to sue or defend as a pauper shall not be liable to any court fee. (E. 147.)
- (113.)  
Counsel, &c., to be assigned. 27. Where a person is admitted to sue or defend as a pauper, the Court or a judge may, if necessary, assign counsel, or solicitor, or both, to assist him, and a counsel or solicitor so assigned shall not be at liberty to refuse his assistance unless he satisfies the Court or Judge that he has some good reason for refusing. (E. 148.)
- (114.)  
No fee permitted. 28. Whilst a person sues or defends as a pauper no person shall take, or agree to take, or seek to obtain from him, any fee, profit, or reward for the conduct of his business in the Court, and any person who takes or agrees to take, or seeks to obtain any such fee, profit, or reward, shall be guilty of a contempt of Court. (E. 149.)
- (115.)  
Punishment, &c., for paying fee. 29. If any person, admitted to sue or defend as a pauper, gives or agrees to give, any such fee, profit, or reward, he shall be forthwith dispaupered, and shall not be afterwards admitted again in the same cause to sue or defend as a pauper. (E. 150.)
- (116.)  
Solicitor to sign notices, &c. 30. No notice of motion shall be served, or summons issued, and no petition shall be presented, on behalf of any person admitted to sue or defend as a pauper, except for the discharge of his solicitor, unless it is signed by his solicitor. (E. 151.)
- (117.)  
Duty of pauper's solicitor. 31. It shall be the duty of the solicitor assigned to a person admitted to sue or defend as a pauper, to take care that no notice is served, or summons issued, or petition presented, without good cause, (E. 152.)
- (118.)  
Costs to be taxed. 32. Costs ordered to be paid to a person admitted to sue or defend as a pauper shall, unless the Court or a Judge shall otherwise direct, be taxed as in other cases. (E. 153.)

### 5.—Administration and Execution of Trusts.

- (119.)  
Persons appointed to represent a class. 33. In any case in which the right of an heir-at-law or the next of kin or a class shall depend upon the construction which the Court or a Judge may put upon an instrument, and it shall not be known or shall be difficult to ascertain who is or are such heir-at-law or next of kin or class, and the Court or Judge shall consider that in

order to save expense, or for some other reason, it will be convenient to have the questions of construction determined before such heir-at-law next of kin or class shall have been ascertained by means of inquiry or otherwise, the Court or Judge may appoint some one or more persons to represent such heir-at-law next of kin or class, and the judgment of the Court or Judge in the presence of such persons shall be binding upon the heir-at-law next of kin or class so represented. (E. 154.)

Order XVI.  
rr. 34—41.

34. Any residuary legatee or next of kin entitled to a judgment or order for the administration of the personal estate of a deceased person, may have the same without serving the remaining residuary legatees or next of kin. (E. 155.)

(120.)  
Residuary legatee and next of kin.

35. Any legatee interested in a legacy charged upon real estate, and any person interested in the proceeds of real estate directed to be sold, and who may be entitled to a judgment or order for the administration of the estate of a deceased person, may have the same without serving any other legatee or person interested in the proceeds of the estate. (E. 156.)

(121.)  
Legatee with charge on realty.

36. Any residuary devisee or heir entitled to the like judgment or order, may have the same without serving any co-residuary devisee or co-heir. (E. 157.)

(122.)  
Residuary devisees and heirs.

37. Any one of several *cestuis que trust* under any deed or instrument entitled to a judgment or order for the execution of the trusts of the deed or instrument, may have the same without serving any other *cestui que trust*. (E. 158.)

(123.)  
*Cestuis que trust*.

38. In all cases of actions for the prevention of waste or otherwise for the protection of property, one person may sue on behalf of himself and all persons having the same interest. (E. 159.)

(124.)  
Waste.

39. Any executor, administrator, or trustee entitled thereto may have a judgment or order against any one legatee, next of kin, or *cestui que trust* for the administration of the estate or the execution of the trusts. (E. 160.)

(125.)  
Remedy against one legatee, &c.

40. The Court or a Judge may require any person to be made a party to any action or proceeding, and may give the conduct of the action or proceeding to such person as may be deemed best, and may make such order in any particular case as may be deemed best for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matters in question. (E. 161.)

(126.)  
Conduct of the proceedings.

41. Wherever, in any action for the administration of the estate of a deceased person or the execution of the

(127.)  
Notice to other parties.

Order XVI.  
rr. 42—47.

trusts of any deed or instrument, or for the partition or sale of any hereditaments, a judgment or an order has been pronounced or made—

(a) Under Order XV;

(b.) Under Order XXXII;

(c.) Affecting the rights or interests of persons not parties to the action;

The Court or a Judge may direct that any person interested in the estate, or under the trust, or in the hereditaments, shall be served with notice of the judgment or order; and after such notice such persons shall be bound by the proceedings in the same manner as if they had originally been made parties, and shall be at liberty to attend the proceedings under the judgment or order. Any person so served may, within one month after such service, apply to the Court or a Judge to discharge, vary, or add to the judgment or order. (E. 162.)

(128.)  
Person notified,  
to appear as de-  
fendant.

42. It shall not be necessary for any person served with notice of any judgment or order, to obtain an order for liberty to attend the proceedings under such judgment or order, but such person shall be at liberty to attend the proceedings upon entering an appearance in the same manner, and subject to the same provisions, as a defendant entering an appearance. (E. 163.)

(129.)  
Entry of service.

43. A memorandum of the service upon any person of notice of the judgment or order in any action under Rule 41 shall be entered in the Prothonotary's Office upon due proof by affidavit of such service. (E. 164.)

(130.)  
Notice how en-  
titled and form.

44. Notice of a judgment or order served pursuant to Rule 41 shall be entitled in the action, and there shall be endorsed thereon a memorandum in the Form No. 22, Appendix G. (E. 165.)

(131.)  
Notice on infant  
or lunatic.

45. Notice of a judgment or order on an infant or person of unsound mind not so found by inquisition or judicial decision, shall be served in the same manner as a writ of summons in an action. (E. 166.)

(132.)  
When heir at  
law necessary  
party.

46. In any case or matter to execute the trusts of a will it shall not be necessary to make the heir-at-law a party, but the plaintiff shall be at liberty to make the heir-at-law a party where he desires to have the will established against him. (E. 167.)

(133.)  
Where no repre-  
sentative.

47. If in any cause, matter, or other proceeding, it shall appear to the Court or a Judge that any deceased person who was interested in the matter in question has no legal personal representative, the Court or Judge may proceed in the absence of any person representing the estate of the deceased person, or may appoint some person to represent his estate for all the purposes of the cause, matter, or other

proceeding, on such notice to such persons, if any, as the Court or Judge shall think fit, either specially or generally by public advertisement, and the order so made, and any order consequent thereon, shall bind the estate of the deceased person in the same manner in every respect as if a duly constituted legal personal representative of the deceased had been a party to the cause, matter, or proceeding. (E. 168.)

Order XVI.  
rr. 48—50.

48. In any cause or matter for the administration of the estate of a deceased person, no party other than the executor or administrator shall, unless by leave of the Court or a Judge, be entitled to appear either in Court or in Chambers on the claim of any person not a party to the cause or matter against the estate of the deceased person in respect of any debt or liability. The Court or a Judge may direct or give liberty to any other party to the cause or matter to appear, either in addition to or in the place of the executor or administrator, upon such terms as to costs or otherwise as they or he shall think fit. (E. 169.)

(184.)  
Who to appear  
in administra-  
tion suits.

#### 6.—*Third Party Procedure.*

49. Where a defendant claims to be entitled to contribution, or indemnity over against any person not a party to the action, he may, by leave of the Court or a Judge, issue a notice (hereinafter called the third-party notice) to that effect, stamped with the seal with which writs of summons are sealed. A copy of such notice shall be filed with the proper officer and served on such person according to the Rules relating to the services of writs of summons. The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the Court or a Judge, be served within the time limited for delivering his defence. Such notice may be in the form or to the effect of the Form No. 1, Appendix B, with such variations as circumstances may require, and therewith shall be served a copy of the statement of claim, or if there be no statement of claim, then a copy of the writ of summons in the action. (E. 170.)

(185.)  
Notice to person  
liable to contri-  
bute to or indem-  
nify defendant.

50. If a person not a party to the action, who is served as mentioned in Rule 49 (hereinafter called the third-party), desires to dispute the plaintiff's claim in the action as against the defendant on whose behalf the notice has been given, or his own liability to the defendant, the third party must enter an appearance in the action within ten days from the service of the notice. In default of his so doing, he shall be deemed to admit the validity of the judgment obtained against such defendant, whether obtained

(186.)  
Appearance by  
third party.

Order XVI.  
rr. 51-53.

by consent or otherwise, and his own liability to contribute or indemnify, as the case may be, to the extent claimed in the third-party notice. Provided always, that a person so served and failing to appear within said period of ten days may apply to the Court or a Judge for leave to appear, and such leave may be given upon such terms, if any, as the Court or Judge shall think fit. (E. 171.)

(187.)  
Default by third party.

51. Where the third party makes default in entering an appearance in the action, in case the defendant giving the notice suffer judgment by default, he shall be entitled at any time, after satisfaction of the judgment against himself, or before such satisfaction by leave of the Court or a Judge, to enter judgment against the third party to the extent of the contribution or indemnity claimed in the third-party notice; provided that it shall be lawful for the Court or a Judge to set aside or vary such judgment upon such terms as may seem just. (E. 172.)

(188.)  
Judgment against third party after trial.

52. Where a third party makes default in entering an appearance in the action, in case the action is tried and results in favor of the plaintiff, the Judge who tries the action may, at or after the trial, enter such judgment as the nature of the case may require for the defendant giving the notice against the third party; provided that execution thereof be not issued without leave of the Judge until after satisfaction by such defendant of the verdict or judgment against him. And if the action is finally decided in the plaintiff's favour, otherwise than by trial, the Court or a Judge may, on application by motion or summons, as the case may be, order such judgment as the nature of the case may require to be entered for the defendant giving the notice against the third party at any time after satisfaction by the defendant of the amount recovered by the plaintiff against him. (E. 173.)

(189.)  
Directions to third party.

53. If a third party appears pursuant to the third-party notice, the defendant giving the notice may apply to the Court or a Judge for directions, and the Court or a Judge, upon the hearing of such application, may, if satisfied that there is a question proper to be tried as to the liability of the third party to make the contribution or indemnity claimed, in whole or in part, order the question of such liability, as between the third party and the defendant giving the notice, to be tried in such manner, at or after the trial of the action, as the Court or Judge may direct; and if not so satisfied may order such judgment as the nature of the case may require to be entered in favour of the defendant giving the notice against the third party. (E. 174.)

54. The Court or a Judge upon the hearing of the application mentioned in Rule 53 may, if it shall appear desirable to do so, give the third party liberty to defend the action, upon such terms as may be just, or to appear at the trial and take such part therein as may be just, and generally may order such proceedings to be taken, documents to be delivered, or amendments to be made, and give such directions as to the Court or Judge shall appear proper, for having the question most conveniently determined, and as to the mode and extent in or to which the third party shall be bound or made liable by the judgment in the action. (E. 175.)

Order XVI.  
rr. 54—56.  
(140.)  
Trial of liability  
of third party.

55. The Court or a Judge may decide all questions of costs as between a third party and the other parties to the action, and may order any one or more to pay the costs of any other, or others, or give such direction as to costs as the justice of the case may require. (E. 176.)

(141.)  
Costs as to third  
party.

56. Where a defendant claims to be entitled to contribution or indemnity against any other defendant to the action, a notice may be issued and the same procedure shall be adopted, for the determination of such questions between the defendants, as would be issued and taken against such other defendant, if such last-mentioned defendant were a third party; but nothing herein contained shall prejudice the rights of the plaintiff against any defendant in the action. (E. 177.)

(142.)  
Third party pro-  
cedure between  
defendants.

ORDER XVII.

CHANGE OF PARTIES BY DEATH, &C.

Order XVII.  
rr. 1, 2.

1. A cause or matter shall not become abated by reason of the marriage, death, or bankruptcy of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation or devolution of any estate or title *pendente lite*; and, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the verdict or finding of the issues of fact and the judgment, but judgment may in such case be entered, notwithstanding the death. (E. 178.)

(143.)  
No abatement  
by death, mar-  
riage, &c.

2. In case of the marriage, death, or assignment, or devolution of estate by operation of law, of any party to a cause or matter, the Court or a Judge may, if it be deemed necessary for the complete settlement of all the questions

(144.)  
Power to add  
parties.



Order XVII.  
rr. 3-7.

involved, order that the husband, personal representative, trustee, or other successor in interest, if any, of any such party be made a party, or be served with notice in such manner and form as hereinafter prescribed, and on such terms as the Court or Judge shall think just, and shall make such order for the disposal of the cause or matter as may be just. (E. 179.)

(145.)  
Successor in title  
or estate to be  
new party.

3. In case of an assignment, creation, or devolution of any estate or title *pendente lite*, the cause or matter may be continued by or against the person to or upon whom such estate or title has come or devolved. (E. 180.)

(146.)  
Power to call in  
persons becom-  
ing interested.

4. Where by reason of marriage, death, assignment, or any other event occurring after the commencement of a case or matter, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the cause or matter, it becomes necessary or desirable that any person not already a party should be made a party, or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties, and such new party or parties, may be obtained *ex parte* on application to the Court or a Judge, upon an allegation of such change, or transmission of interest or liability, or of such person interested having come into existence. (E. 181.)

(147.)  
Order to be ser-  
ved on such.

5. An order obtained as in the last preceding Rule mentioned shall, unless the Court or Judge shall otherwise direct, be served upon the continuing party or parties, or their solicitors, and also upon each such new party, unless the person making the application be himself the only new party, and the order shall from the time of such service, subject nevertheless to the next two following Rules, be binding on the persons served therewith, and every person served therewith who is not already a party to the cause or matter, shall be bound to enter an appearance thereto within the same time and in the same manner as if he had been served with a writ of summons. (E. 182.)

(148.)  
Varying order.

6. When any person who is under no disability or under no disability other than coverture, or being under any disability other than coverture, but having a guardian *ad litem* in the cause or matter, shall be served with such order as in Rule 4 mentioned, such person may apply to the Court or a Judge to discharge or vary such order at any time within twelve days from the service thereof. (E. 183.)

(149.)  
Persons under  
disability.

7. Where any person being under any disability other than coverture, and not having a guardian *ad litem* in the cause or matter, is served with any order as in Rule 4

mentioned, such person may apply to the Court or a Judge to discharge or vary such order at any time within twelve days from the appointment of a guardian *ad litem* for such party, and until such period of twelve days shall have expired such order shall have no force or effect as against such last mentioned person. (E. 184.)

Order XVII.  
rr. 8-10.

8. When the plaintiff or defendant in a cause or matter dies, and the cause of action survives, but the person entitled to proceed fails to proceed, the defendant (or the person against whom the cause or matter may be continued) may apply by summons to compel the plaintiff (or the person entitled to proceed) to proceed within such time as may be ordered: and in default of such proceeding, judgment may be entered for the defendant, or, as the case may be, for the person against whom the cause or matter might have been continued; and in such case, if the plaintiff has died, execution may issue as in the case provided for by order XL, Rule 23. (E. 185.)

(150.)  
Defendant compelling plaintiff to proceed.

9. Where any cause or matter becomes abated, or in case of any such change of interest as by this Order provided for, the solicitor for the plaintiff, or person having the conduct of the cause or matter, as the case may be, shall certify the fact to the proper officer, who shall cause an entry thereof to be made in the Cause Book opposite to the name of such cause or matter. (E. 186.)

(151.)  
Certificate of abatement.

10. Where any cause or matter shall have been standing for one year in the Cause Book marked as "abated," or standing over generally, such cause or matter at the expiration of the year shall be struck out of the Cause Book. (E. 187.)

(152.)  
Striking out abated cause.

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ORDER XVIII.

Order XVIII.  
rr. 1, 2.

JOINDER OF CAUSES OF ACTION

1. Subject to the following Rules of this Order, the plaintiff may unite in the same action several causes of action, but if it appear to the Court or a Judge that any such causes of action cannot be conveniently tried or disposed of together, the Court or Judge may order separate trials of any of such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof. (E. 188.)

(153.)  
Subject to order, several causes of action may be joined.

2. No cause of action shall, unless by leave of the Court or a Judge, be joined with an action for the recovery of land, except claims in respect of mesne profits or arrears

(154.)  
Excepting in actions for land.

Order XVIII.  
rr. 3—9. of rent or double value in respect of the premises claimed, or any part thereof, and damages for breach of any contract under which the same or any part thereof are held, or for any wrong or injury to the premises claimed. (E. 189.)

(155.)  
And claims by trustees in bankruptcy. 3. Claims by a trustee in bankruptcy or insolvency as such, shall not, unless by leave of the Court or a Judge, be joined with any claim by him in any other capacity. (E. 190.)

(156.)  
By or against married persons. 4. Claims by or against husband and wife may be joined with claims by or against either of them separately. (E. 191.)

(157.)  
Executors, &c. 5. Claims by or against an executor or administrator, as such, may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator. (E. 192.)

(158.)  
By plaintiffs jointly and severally. 6. Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant. (E. 193.)

(159.)  
Proviso. 7. The last three preceding Rules shall be subject to Rules 1, 8, and 9 of this Order. (E. 194.)

(160.)  
Application to strike out. 8. Any defendant alleging that the plaintiff has united in the same action several causes of action which cannot be conveniently disposed of together, may at any time apply to the Court or a Judge for an order confining the action to such of the causes of action as may be conveniently disposed of together. (E. 195.)

(161.)  
Order to strike out pleadings. 9. If, on the hearing of such application as in the last preceding Rule mentioned, it shall appear to the Court or a Judge that the causes of action are such as cannot all be conveniently disposed of together, the Court or Judge may order any of such causes of action to be excluded, and consequential amendments to be made, and may make such order as to costs as may be just. (E. 196.)

ORDER XIX.

Order XIX.  
rr. 1-5.

PLEADING GENERALLY.

1. The following rules of pleading shall be used in the Supreme Court instead of those heretofore used. (E. 197.) <sup>(162.)</sup> New rules of pleading.

2. The plaintiff shall, subject to the provisions of Order XX., and at such time and in such manner as therein prescribed, deliver to the defendant a statement of his claim, and of the relief or remedy to which he claims to be entitled. The defendant shall, subject to the provisions of Order XXI., and at such time and in such manner as therein prescribed, deliver to the plaintiff his defence, set-off, or counter-claim (if any), and the plaintiff shall, subject to the provisions of Order XXIII., and at such time and in such manner as therein prescribed, deliver his reply (if any) to such defence, set-off, or counter-claim. Such statements shall be as brief as the nature of the case will admit, and the taxing authority in adjusting the costs of the action shall at the instance of any party, or may without any request, inquire into any unnecessary prolixity, and order the costs occasioned by such prolixity to be borne by the party chargeable with the same. (E. 198.) <sup>(163.)</sup> Statement of claim. Defence. Reply. Costs of prolixity.

3. A defendant in an action may set off, or set up, by way of counter-claim against the claims of the plaintiff, any right or claim, whether such set-off or counter-claim sound in damages or not, and such set-off or counter-claim shall have the same effect as a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the Court or a Judge may, on application of the plaintiff before trial, if in the opinion of the Court or Judge such set-off or counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof. (E. 199.) <sup>(164.)</sup> Set-off and counter-claim.

4. Every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs numbered consecutively. Dates, sums, and numbers shall be expressed in figures and not in words. Pleadings shall be signed by the solicitor, or by the party if he sues or defends in person. (E. 200.) <sup>(165.)</sup> Pleading to be a summary statement. To be signed.

5. The Forms in Appendices C., D., and E., when applicable, and where they are not applicable, Forms of a <sup>(166.)</sup> Forms.

Order XIX.  
rr. 6—12. like character, as near as may be, shall be used for all pleadings, and where such Forms are applicable and sufficient any longer Forms shall be deemed prolix, and the costs occasioned by such prolixity shall be disallowed to or borne by the party so using the same, as the case may be. (E. 201.)

(167.)  
Particulars in certain cases. 6. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the Forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading; provided that, if the particulars be of debt, expenses, or damages, and exceed three folios, the fact must be so stated, with a reference to full particulars already delivered or to be delivered with the pleading. (E. 202.)

(168.)  
Further and better particulars. 7. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, notice, or written proceeding requiring particulars, may in all cases be ordered, upon such terms as to costs and otherwise as may be just. (E. 203.)

(169.)  
Time after particulars. 8. The party at whose instance particulars have been delivered under a Judge's order shall, unless the order otherwise provides, have the same length of time for pleading after the delivery of the particulars that he had at the return of the summons. Save as in this Rule provided, an order for particulars shall not, unless the order otherwise provides, operate as a stay of proceedings, or give any extension of time. (E. 204.)

(170.)  
Written or printed. 9. Every pleading may be either printed or written, or partly printed and partly written. (E. 205.)

(171.)  
Service of pleadings. 10. Every pleading or other document required to be delivered to a party, or between parties, shall be delivered, in the manner now in use, to the solicitor of every party who appears by a solicitor, or to the party if he does not appear by a solicitor, but if no appearance has been entered for any party, then such pleading or document shall be delivered by being filed with the proper officer. (E. 206.)

(172.)  
Pleadings, how marked. 11. Every pleading shall be delivered between parties, and shall be marked on the face with the date of the day on which it is delivered, the reference to the letter and number of the action, the title of the action, and the description of the pleading. (E. 207.)

(173.)  
Not guilty by statute. 12. Nothing in these Rules contained shall affect the right of any defendant to plead not guilty by statute. And every defence of not guilty by statute shall have the same effect as a plea of not guilty by statute has

heretofore had. But if the defendant so plead, he shall not plead any other defence to the same cause of action without the leave of the Court or a Judge. (E. 208.)

Order XIX.  
rr. 13—18.

13. Every allegation of fact in any pleading, not being a petition or summons, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, lunatic, or person of unsound mind not so found by inquisition or judicial decision. (E. 209.)

(174.)  
Tacit admissions.

14. Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant (as the case may be); and subject thereto an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading. (E. 210.)

(175.)  
Conditions precedent.

15. The defendant or plaintiff (as the case may be) must raise by his pleading all matters which show the action or counter-claim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence or reply, as the case may be, as if not raised would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings, as for instance, fraud, Statute of Limitation, release, payment, performance, facts showing illegality either by statute or common law, or Statute of Frauds. (E. 211.)

(176.)  
What facts must be pleaded.

16. No pleading, not being a petition or summons, shall, except by way of amendment, raise any new grounds of claim, or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same. (E. 212.)

(177.)  
No inconsistent pleadings.

17. It shall not be sufficient for a defendant in his statement of defence to deny generally the grounds alleged by the statement of claim, or for a plaintiff in his reply to deny generally the grounds alleged in a defence by way of counter-claim, but each party must deal specifically with each allegation of fact of which he does not admit the truth, except damages. (E. 213.)

(178.)  
General denial insufficient.

18. Subject to the last preceding Rule, the plaintiff by his reply may join issue upon the defence, and each party in his pleading (if any), subsequent to reply, may join issue upon the previous pleading. Such joinder of issue shall operate as a denial of every material allegation of facts in the pleading upon which issue is joined, but it may except any facts which the party may be willing to

(179.)  
Joining issue.

Order XIX. admit, and shall then operate as a denial of the facts not  
rr. 19—24. so admitted. (E. 214.)

(180.)  
 Answer to be direct and full. 19. When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but answer the point of substance. Thus, if it be alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with divers circumstances, it shall not be sufficient to deny it along with those circumstances. (E. 215.)

(181.)  
 Denial of contract. 20. When a contract, promise, or agreement is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract, promise, or agreement alleged, or of the matters of fact from which the same may be implied by law, and not as a denial of the legality or sufficiency in law of such contract, promise, or agreement, whether with reference to the Statute of Frauds or otherwise. (E. 216.)

Legality.  
 Statute of Frauds.

(182.)  
 Effect of documents to be stated. 21. Wherever the contents of any documents are material, it shall be sufficient in the pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof unless the precise words of the document or any part thereof are material. (E. 217.)

(183.)  
 Allegation of malice, &c. 22. Wherever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred. (E. 218.)

(184.)  
 Allegation of notice. 23. Wherever it is material to allege notice to any person of any fact, matter, or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, be material. (E. 219.)

(185.)  
 Implied contract. 24. Whenever any contract or any relation between any persons is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative. (E. 220.)

25. Neither party need in any pleading allege any matter of fact which the law presumes in his favor or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied: (*e. g.*, consideration for a bill of exchange, where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim). (E. 221.)

Order XIX.  
rr. 25—30.

(186.)  
Presumed facts need not be stated.

26. No technical objection shall be raised to any pleading on the ground of any alleged want of form. (E. 222.)

(187.)  
No technical objections.

27. The Court or a Judge may at any stage of the proceedings order to be struck out or amended any matter in any indorsement or pleading which may be unnecessary or scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of the action; and may in any such case, if they or he shall think fit, order the costs of the application to be paid as between solicitor and client. (E. 223.)

(188.)  
Amending and striking out pleadings.

28. Delivering a statement of claim or defence, or other pleading or proceeding, when mentioned or referred to in these Orders, includes filing, where by the practice of the Court heretofore, or under these Orders, statements, pleadings, or proceedings of a like kind ought to be filed. (O. 150.)

(189.)  
Filing necessary.

29. In any action for slanderous words spoken of any woman, imputing to her any unchaste conduct, it shall not be necessary to allege in pleading, or prove at the trial, that any special damage resulted to her from the utterance of such words; but she shall recover such damages as may be assessed, without such averment or proof of damage. (P. A. 184.)

(190.)  
Special damage need not be alleged in certain cases.

30. In cases of any action founded upon a bill of exchange or other negotiable instrument, it shall be lawful for the Court or a Judge to order that the loss of such instrument shall not be set up, provided an indemnity is given, to the satisfaction of the Court or Judge, against the claims of any other person upon such negotiable instrument. (P. A. 241.)

(191.)  
Loss of bill of exchange not to be set up as defence.



Order XX.  
r. 1.

## ORDER XX.

## STATEMENT OF CLAIM.

- (192.)  
Delivery of  
claims.
- Where writ  
specially in-  
dorsed.
- Need not be de-  
livered unless de-  
manded.
- Time for de-  
livery.
- Statement of  
claim may be  
delivered.
- Costs of unneces-  
sary statement  
of claim.
- I. The delivery of statements of claim shall be regulated as follows :—
- (a.) Where the writ is specially indorsed under Order III., Rule 5, no further statement of claim shall be delivered, but the indorsement on the writ shall be deemed to be the statement of claim :
- (b.) Subject to the provisions of Order XIII., Rule 13, as to filing a statement of claim when there is no appearance, no statement of claim need be delivered unless the defendant at the time of entering appearance, or within eight days thereafter, gives notice in writing to the plaintiff or his solicitor that he requires a statement of claim to be delivered :
- (c.) If no statement of claim has been delivered and the defendant gives notice requiring the delivery of a statement of claim, the plaintiff shall, unless otherwise ordered by the Court or a Judge, deliver it within four weeks from the time of the plaintiff receiving such notice :
- (d.) The plaintiff may (except as in (a.) mentioned) deliver a statement of claim, either with the writ of summons or notice in lieu of writ of summons, or at any time afterwards either before or after appearance, notwithstanding that the defendant may have appeared and not required the delivery of a statement of claim: Provided that in no case where a defendant has appeared shall a statement be delivered more than five weeks after the appearance has been entered unless otherwise ordered by the Court or a Judge :
- (e.) Where the plaintiff delivers a statement of claim without being required to do so, or the defendant unnecessarily requires such statement, the Court or a Judge may make such order as to the costs occasioned thereby as shall be just, if it appears that the delivery of a statement of claim was unnecessary or improper. (E. 225.)

2. Whenever a statement of claim is delivered the plaintiff may therein alter, modify, or extend his claim without any amendment of the indorsement of the writ. (E. 228.)

**Order XX.**  
**rt. 2—6.**  
(193.)  
Amendment of indorsement unnecessary.

3. The statement of claim must in all cases show the proposed place of trial. (E. 229.)

(194.)  
Must show place of trial.

4. Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given, as the Court or a Judge may think just, to the same extent as if it had been asked for. And the same rule shall apply to any counter-claim made, or relief claimed by the defendant, in his defence. (E. 230.)

(195.)  
Claim for relief must be specific.

5. Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct grounds they shall be stated, as far as may be, separately and distinctly. And the same rule shall apply where the defendant relies upon several distinct grounds of defence, set-off, or counter-claim founded upon separate and distinct facts. (E. 231.)

(196.)  
Separate causes of complaint.

6. In every case in which the cause of action is a stated or settled account, the same shall be alleged with particulars, but in every case in which a statement of account is relied on by way of evidence or admission of any other cause of action which is pleaded, the same shall not be alleged in the pleadings. (E. 232.)

(197.)  
Account stated to be alleged, if it be cause of action.

ORDER XXL

DEFENCE AND COUNTER-CLAIM.

**Order XXI.**  
**rt. 1—3.**

1. In actions for a debt or liquidated demand in money comprised in Order III., Rule 5, a mere denial of the debt shall be inadmissible. (E. 234.)

(198.)  
Mere denial of debt inadmissible.

2. In actions upon bills of exchange, promissory notes, or cheques, a defence in denial must deny some matter of fact; *e. g.*, the drawing, making, indorsing, accepting, presenting, or notice of dishonor of the bill or note. (E. 235.)

(199.)  
Defence in actions on bills and notes.

3. In actions comprised in Order III., Rule 5, classes (A.) and (B.), a defence in denial must deny such matters of fact, from which the liability of the defendant is alleged to arise, as are disputed; *e. g.*, in actions for goods bargained and sold or sold and delivered, the defence must deny the order or contract, the delivery, or the amount

(200.)  
Defence in actions on other debts.

- Order XXI.**  
**rr. 4—11.**
- (201.)  
No denial of damage.
- (202.)  
Denial of representative capacity.
- (203.)  
Time for delivery of defence where claim delivered.
- (204.)  
Time for delivery, if no statement of claim.
- (205.)  
Where leave to defend is given.
- (206.)  
Improper denial. Costs.
- (207.)  
Specific statement of counter-claim.
- (208.)  
Counter-claim which includes a third party.
- claimed; in an action for money had and received, it must deny the receipt of the money, or the existence of those facts which are alleged to make such receipt by the defendant a receipt to the use of the plaintiff. (E. 236.)
4. No denial or defence shall be necessary as to damages claimed or their amount; but they shall be deemed to be put in issue in all cases, unless expressly admitted. (E. 237.)
5. If either party wishes to deny the right of any other party to claim as executor, or as trustee, or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically. (E. 238.)
6. Where a statement of claim is delivered to a defendant he shall deliver his defence within 10 days from the delivery of the statement of claim, or from the time limited for appearance, whichever shall be last, unless such time is extended by the Court or a Judge. (E. 239.)
7. A defendant who has appeared in an action, and who has neither received nor required the delivery of a statement of claim, must deliver his defence (if any) at any time within ten days after his appearance, unless such time is extended by the Court or a Judge. (E. 240.)
8. Where leave has been given to a defendant to defend under Order XIV., he shall deliver his defence (if any) within such time as shall be limited by the order giving him leave to defend, or if no time is hereby limited, then within eight days after the order. (E. 241.)
9. Where the Court or a Judge shall be of opinion that any allegations of fact denied or not admitted by the defence ought to have been admitted, the Court or Judge may make such order as shall be just with respect to any extra costs occasioned by their having been denied or not admitted. (E. 242.)
10. Where any defendant seeks to rely upon any grounds as supporting a right of counter-claim, he shall, in his statement of defence, state specifically that he does so by way of counter-claim. (E. 243.)
11. Where a defendant by his defence sets up any counter-claim which raises questions between himself and the plaintiff along with any other persons, he shall add to the title of his defence a further title similar to the title in a statement of claim setting forth the names of all the persons who, if such counter-claim were to be enforced by cross action, would be defendants to such cross action, and shall deliver his statement of defence to such of them as are parties to the action within the period within which he is required to deliver it to the plaintiff. (E. 244.)

12. Where any such person as in the last preceding Rule mentioned is not a party to the action, he shall be summoned to appear by being served with a copy of the defence, and such service shall be regulated by the same Rules as are hereinbefore contained with respect to the service of a writ of summons, and every defence so served shall be indorsed in the Form No. 2, in Appendix B, or to the like effect. (E. 245.)

Order XXI.  
rr. 12—18.  
(209.)  
How such party summoned.

13. Any person not a defendant to the action, who is served with a defence and counter-claim as aforesaid, must appear thereto as if he had been served with a writ of summons to appear in an action. (E. 246.)

(210.)  
Such party must appear.

14. Any person named in a defence as a party to a counter-claim thereby made may deliver a reply within the time within which he might deliver a defence if it were a statement of claim. (E. 247.)

(211.)  
Reply to counter-claim.

15. Where a defendant sets up a counter-claim, if the plaintiff or any other person named in manner aforesaid as party to such counter-claim contends that the claim thereby raised ought not to be disposed of by way of counter-claim, but in an independent action, he may at any time before reply, apply to the Court or a Judge for an order that such counter-claim may be excluded, and the Court or a Judge may, on the hearing of such application, make such order as shall be just. (E. 248.)

(212.)  
Excluding counter-claim.

16. If, in any case in which the defendant sets up a counter-claim, the action of the plaintiff is stayed, discontinued, or dismissed, the counter-claim may nevertheless be proceeded with. (E. 249.)

(213.)  
Counter-claim not stayed by discontinuance.

17. Where in any action a set-off or counter-claim is established as a defence against the plaintiff's claim, the Court or a Judge may, if the balance is in favor of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case. (E. 250.)

(214.)  
Judgment for balance of counter-claim.

18. In every case in which a party shall plead the general issue, intending to give the special matter in evidence by virtue of an Act of Parliament, he shall insert in the margin of his pleading the words "by statute," together with the year of our Lord in which the Act of Parliament on which he relies was passed, and also the chapter and section of such Act, and shall specify whether such Act is public or otherwise; otherwise such defence shall be taken not to have been pleaded by virtue of any Act of Parliament. (E. 252.)

(215.)  
General issue by statute, how pleaded.

**Order XXI.****rr. 19, 20.**<sup>(216.)</sup>  
Pleas in abate-  
ment abolished.<sup>(217.)</sup>  
Title need not be  
pleaded in action  
for land.

19. No plea or defence shall be pleaded in abatement. (E. 253.)

20. No defendant in an action for the recovery of land who is in possession by himself or his tenant need plead his title, unless his defence depends on an equitable estate or right, or he claims relief upon any equitable ground against any right or title asserted by the plaintiff. But, except in the cases hereinbefore mentioned, it shall be sufficient to state, by way of defence, that he is so in possession, and it shall be taken to be implied in such statement that he denies, or does not admit, the allegations of fact contained in the plaintiff's statement of claim. He may nevertheless rely upon any ground of defence which he can prove, except as hereinbefore mentioned. (E. 254.)

**Order XXII****rr. 1-5.****ORDER XXII.****PAYMENT INTO AND OUT OF COURT AND TENDER.**<sup>(218.)</sup>  
Payment into  
Court with de-  
nial of liabil-  
ity.

1. Where any action is brought to recover a debt or damages, any defendant may, before or at the time of delivering his defence, or at any later time by leave of the Court or a Judge, pay into Court a sum of money by way of satisfaction, which shall be taken to admit the claim or cause of action in respect of which the payment is made; or he may, with a defence denying liability, (except in actions or counter-claims for libel or slander) pay money into Court, which shall be subject to the provisions of Rule 6. (E. 255.)

<sup>(219.)</sup>  
To be signified  
in defence.

2. Payment into Court shall be signified in the defence, and the claim or cause of action in satisfaction of which such payment is made shall be specified therein. (E. 256.)

<sup>(220.)</sup>  
Tender.

3. With a defence setting up a tender before action, the sum of money alleged to have been tendered must be brought into Court. (E. 257.)

<sup>(221.)</sup>  
Notice of, before  
delivery of de-  
fence.

4. If the defendant pays money into Court before delivering his defence, he shall serve upon the plaintiff a notice specifying both the fact that he has paid in such money, and also the claim or cause of action in respect of which such payment has been made. Such notice shall be in the Form No. 3, in Appendix B, with such variations as circumstances may require. (E. 258.)

<sup>(222.)</sup>  
When to be paid  
to plaintiff.

5. In the following cases of payment into Court under this Order, viz. :—

- (a) When payment into Court is made before delivery of the defence: Order XXII.  
r. 6.
- (b.) When the liability of the defendant, in respect of the claim or cause of action in satisfaction of which the payment into Court is made, is not denied in the defence:

(c.) When payment into Court is made with a defence setting up a tender of the sum paid: the money paid into Court shall be paid out to the plaintiff on his request, or to his solicitor on the plaintiff's written authority, unless the Court or a Judge shall otherwise order. (E. 259.)

6. When the liability of the defendant, in respect of the claim or cause of action in satisfaction of which the payment into Court has been made, is denied in the defence, the following rules shall apply:— (223.)  
With defence  
denying liability,  
Plaintiff accept-  
ing or refusing.

- (a.) The plaintiff may accept, in satisfaction of the claim or cause of action in respect of which the payment into Court has been made, the sum so paid in, in which case he shall be entitled to have the money paid out to him as hereinafter provided, notwithstanding the defendant's denial of liability, whereupon all further proceedings, in respect of such claim or cause of action, except as to costs, shall be stayed; or the plaintiff may refuse to accept the money in satisfaction, and reply accordingly, in which case the money shall remain in Court subject to the provisions hereinafter mentioned:
- (b.) If the plaintiff accepts the money so paid in, he shall, after service of such notice in the Form No. 4 in Appendix B., as in Rule 7 mentioned, or after delivery of a reply accepting the money, be entitled to have the money paid out to himself on request, or to his solicitor on the plaintiff's written authority, unless the Court or a Judge shall otherwise order:
- (c.) If the plaintiff does not accept, in satisfaction of the claim or cause of action in respect of which the payment into Court has been made, the sum so paid in, but proceeds with the action in respect of such claim or cause of action, or any part thereof, the money shall

Order XXII.  
rr. 7—10.

remain in Court and be subject to the order of the Court or a Judge, and shall not be paid out of Court except in pursuance of an order. If the plaintiff proceeds with the action in respect of such claim or cause of action, or any part thereof, and recovers less than the amount paid into Court, the amount paid shall be applied, so far as is necessary, in satisfaction of the plaintiff's claim, and the balance (if any) shall, under such order, be repaid to the defendant. If the defendant succeeds in respect of such claim or cause of action, the whole amount shall, under such order, be repaid to him. (E. 260.)

(224.)  
Acceptance and satisfaction. 7. The plaintiff, when payment into Court is made before delivery of defence, may within four days after the receipt of notice of such payment, or when such payment is first signified in a defence, may before reply, accept in satisfaction of the claim or cause of action in respect of which such payment has been made the sum so paid in, in which case he shall give notice to the defendant in the Form No. 4, in Appendix B., and shall be at liberty, in case the entire claim or cause of action is thereby satisfied, to tax his costs after the expiration of four days from the service of such notice, unless the Court or a Judge shall otherwise order, and in case of non-payment of the costs within forty-eight hours after such taxation, to sign judgment for his costs so taxed. (E. 261.)

(225.)  
In consolidated actions. 8. Where money is paid into Court in two or more actions which are consolidated, and the plaintiff proceeds to trial in one, and fails, the money paid in and the costs in all the actions shall be dealt with under this Order in the same manner as in the action tried. (E. 262.)

(226.)  
Plaintiff may pay in money on counter-claim. 9. A plaintiff may, in answer to a counter-claim, pay money into Court in satisfaction thereof, subject to the like conditions as to costs and otherwise as upon payment into Court by a defendant. (E. 263.)

(227.)  
How appropriated. 10. Money paid into Court under an order of the Court or a Judge, shall not be paid out of Court except in pursuance of an order of the Court or a Judge: Provided that, where before the delivery of defence money has been paid into Court by the defendant pursuant to any order under the provisions of Order XIV., he may (unless the Court or a Judge shall otherwise order) by his pleading appropriate the whole or any part of such money, and any additional payment if necessary, to the whole or any

specified portion of the plaintiff's claim ; and the money so appropriated shall thereupon be deemed to be money paid into Court pursuant to the preceding Rules of this Order relating to money paid into Court, and shall be subject in all respects thereto. (E. 265.)

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rr. 11—16.

11. The manner of payment into and out of Court, and the manner in which the money in Court shall be dealt with, shall be subject to the regulations contained in Appendix M. (E. 267.)

(228.)  
Rules.  
Appendix M.

12. All money standing in Court at the commencement of the second day of October, A. D. 1884, shall thereafter be subject in all respects to the provisions of this Order. (E. 268.)

(229.)  
Money paid in  
previous to  
Rules.

13. In any cause or matter in which a sum of money has been awarded to or recovered by an infant, or person of unsound mind not so found by inquisition or judicial decision, the Court or a Judge may at or after the trial order that the whole or any part of such sum shall be paid into Court to the credit of an account intituled in the cause or matter ; and any sum so paid into Court, and any dividend or interest thereon, shall be subject to such orders as may from time to time be made by the Court or a Judge concerning the same, and may either be invested, or be paid out of Court, or transferred to such persons, to be held and applied upon and for such trusts and in such manner, as the Court or Judge shall direct. (E. 269.)

(230.)  
Money of per-  
sons under dis-  
ability.

14. Money paid into Court or securities purchased under the provisions of the last preceding Rule, and the dividends or interest thereon, shall be sold, transferred, or paid out to the party entitled thereto, pursuant to the order of the Court or a Judge. (E. 270.)

(231.)  
Subject to con-  
trol of Court, &c.

15. Cash under the control of or subject to the order of the Court, may be invested in Dominion or Provincial securities, and upon mortgage of freehold estates. (E. 271.)

(232.)  
How invested.

16. Every application for the purpose of the conversion of any stocks, funds, or securities into any other stocks, funds, or securities authorized by the last preceding Rule, shall be served upon such persons, if any, as the Court or Judge shall think fit. (E. 272.)

(233.)  
Application to  
convert stocks,  
&c.



**Order XXIII.**  
**rr. 1-6.**

**ORDER XXIII.**

**REPLY AND SUBSEQUENT PLEADINGS.**

(234.)  
Reply when  
made.

1. A plaintiff shall deliver his reply, if any, within twenty-one days after the defence or the last of the defences shall have been delivered, unless the time shall be extended by the Court or a Judge. (E. 276.)

(235.)  
Subsequent  
pleadings, leave  
for.

2. No pleading subsequent to reply other than a joinder of issue shall be pleaded without leave of the Court or a Judge, and then shall be pleaded only upon such terms as the Court or Judge shall think fit. (E. 277.)

(236.)  
Time for deliv-  
ery.

3. Subject to the last preceding Rule, every pleading subsequent to reply shall be delivered within four days after the delivery of the previous pleading, unless the time shall be extended by the Court or a Judge. (E. 278.)

(237.)  
Reply to count-  
er-claim.

4. Where a counter-claim is pleaded, a reply thereto shall be subject to the Rules applicable to statements of defence. (E. 279.)

(238.)  
Close of plead-  
ings.

5. As soon as any party has joined issue upon the preceding pleading of the opposite party, simply, without adding any further or other pleading thereto, or has made default as mentioned in Order XXVII., Rule 12, the pleadings as between such parties shall be deemed to be closed. (E. 280.)

(239.)  
New assignment,  
abolished.

6. No new assignment shall be necessary or used. But everything which was formerly alleged by way of new assignment may hereafter be introduced by amendment of the statement of claim, or by way of reply. (E. 281.)

**Order XXIV.**  
**rr. 1, 2.**

**ORDER XXIV.**

**MATTERS ARISING PENDING THE ACTION.**

(240.)  
Matters arising  
after action may  
be pleaded.

1. Any ground of defence which has arisen after action brought, but before the defendant has delivered his statement of defence, and before the time limited for his doing so has expired, may be raised by the defendant in his statement of defence, either alone or together with other grounds of defence. And if, after a statement of defence has been delivered, any ground of defence arises to any set-off or counter-claim alleged therein by the defendant, it may be raised by the plaintiff in his reply, either alone or together with any other ground of reply. (E. 282.)

(241.)  
Arising after  
pleadings, may  
be used.

2. Where any ground of defence arises after the defendant has delivered his statement of defence, or after the time limited for his doing so has expired, the defendant

may, and where any ground of defence to any set-off or counter-claim arises after reply, or after the time limited for delivering a reply has expired, the plaintiff may, within eight days after such ground of defence has arisen, or at any subsequent time by leave of the Court or a Judge, deliver a further defence or further reply, as the case may be, setting forth the same. (E. 283.)

Order XXIV.  
r. 3.

3. Whenever any defendant, in his statement of defence, or in any further statement of defence as in the last Rule mentioned, alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may deliver a confession of such defence (which confession may be in the Form No. 5 in Appendix B., with such variations as circumstances may require), and may thereupon sign judgment for his costs up to the time of the pleading of such defence, unless the Court or a Judge shall, either before or after the delivery of such confession, otherwise order. (E. 284.)

(242.)  
Confession of defence.

Costs.

ORDER XXV.

PROCEEDINGS IN LIEU OF DEMURRER.

Order XXV.  
r. 1-5.

1. No demurrer shall be allowed. (E. 285.)

(243.)  
No demurrer.

2. Any party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the Judge who tries the cause at or after the trial, provided that by consent of the parties, or by order of the Court or a Judge on the application of either party, the same may be set down for hearing and disposed of at any time before the trial. (E. 286.)

(244.)  
Point of law, how raised.

3. If, in the opinion of the Court or a Judge, the decision of such point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set-off, counter-claim, or reply therein, the Court or Judge may thereupon dismiss the action or make such other order therein as may be just. (E. 287.)

(245.)  
Proceedings thereon.

4. The Court or a Judge may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer, and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court or a Judge may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just. (E. 288.)

(246.)  
Striking out bad pleading.

5. No action or proceeding shall be open to objection, on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether any consequential relief is or could be claimed or not. (E. 289.)

(247.)  
Declaration of right may be sought.

Order XXVI.  
 rr. 1-4.

## ORDER XXVI.

## DISCONTINUANCE.

(248.)  
 Discontinuance.

Costs.

Withdrawal of  
 record.

Striking out de-  
 fence.

(249.)  
 Withdrawing re-  
 cord by consent.

(250.)  
 Defendant's  
 costs.

(251.)  
 Subsequent ac-  
 tion.

1. The plaintiff may at any time before receipt of the defendant's defence, or after the receipt thereof before taking any other proceeding in the action (save any interlocutory application), by notice in writing, wholly discontinue his action against all or any of the defendants, or withdraw any part or parts of his alleged cause of complaint, and thereupon he shall pay such defendant's costs of the action, or, if the action be not wholly discontinued, the costs occasioned by the matter so withdrawn. Such costs shall be taxed, and such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action. Save as in this Rule otherwise provided, it shall not be competent for the plaintiff to withdraw the record or discontinue the action without leave of the Court or a Judge, but the Court or a Judge may before, or at, or after the hearing or trial, upon such terms as to costs, and as to any other action, and otherwise, as may be just, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out. The Court or a Judge may, in like manner, and with the like discretion, as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counter-claim to be withdrawn or struck out, but it shall not be competent to a defendant to withdraw his defence, or any part thereof, without such leave. (E. 290.)

2. When a cause has been entered for trial, it may be withdrawn by either plaintiff or defendant, upon producing to the proper officer a consent in writing, signed by the parties. (E. 291.)

3. Any defendant may enter judgment for the costs of the action, if it is wholly discontinued against him, or for the costs occasioned by the matter withdrawn, if the action be not wholly discontinued, in case such respective costs are not paid within two days after taxation. (E. 292.)

4. If any subsequent action shall be brought before payment of the costs of a discontinued action, for the same or substantially the same cause of action, the Court or a Judge may, if they or he think fit, order a stay of such subsequent action, until such costs shall have been paid. (E. 293.)

ORDER XXVII.

Order XXVII.  
rr. 1—5.

DEFAULT OF PLEADING.

1. If the plaintiff, being bound to deliver a statement of claim, does not deliver the same within the time allowed for that purpose, the defendant may, at the expiration of that time, apply to the Court or a Judge to dismiss the action with costs, for want of prosecution; and on the hearing of such application the Court or Judge may, if no statement of claim shall have been delivered, order the action to be dismissed accordingly, or may make such other order on such terms as the Court or Judge shall think just. (E. 294.)

(252.)  
Plaintiff in default, action may be dismissed.

2. If the plaintiff's claim be only for a debt or liquidated demand, and the defendant does not within the time allowed for that purpose deliver a defence, the plaintiff may at the expiration of such time enter final judgment for the amount claimed, with costs. (E. 295.)

(253.)  
Defendant in default, plaintiff may enter judgment.

3. When in any such action as in the last preceding Rule mentioned there are several defendants, if one of them make default, as mentioned in the last preceding Rule, the plaintiff may enter final judgment against the defendant so making default, and issue execution upon such judgment without prejudice to his right to proceed with his action against the other defendants. (E. 296.)

(254.)  
Default by some defendants.

4. If the plaintiff's claim be for detention of goods and pecuniary damages, or either of them, and the defendant, or all the defendants if more than one, make default as mentioned in Rule 2, the plaintiff may enter an interlocutory judgment against the defendant or defendants, and a writ of inquiry shall issue to assess the value of the goods, and the damages, or the damages only, as the case may be. But the Court or a Judge may order that, instead of a writ of inquiry, the value and amount of damages, or either of them, shall be ascertained in any way which the Court or a Judge may direct. (E. 297.)

(255.)  
In actions for detention of goods.

5. When in any such action as in Rule 4 mentioned there are several defendants, if one or more of them make default, as mentioned in Rule 2, the plaintiff may enter an interlocutory judgment against the defendant or defendants so making default, and proceed with his action against the others. And in such case the value and amount of damages against the defendant making default shall be assessed at the same time with the trial of the action or issues therein against the other defendants, unless the Court or a Judge shall otherwise direct. (E. 298.)

(256.)  
Default by some defendants in action for detention.

**Order XXVII.****rr. 6—11.**

(257.)  
In actions for de-  
tention and  
money demand.

6. If the plaintiff's claim be for a debt or liquidated demand, and also for detention of goods and pecuniary damages, or pecuniary damages only, and any defendant make default as mentioned in Rule 2, the plaintiff may enter final judgment for the debt or liquidated demand, and also enter interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be, and proceed as mentioned in Rules 4 and 5. (E. 299.)

(258.)  
Action for land.

7. In an action for the recovery of land, if the defendant makes default as mentioned in Rule 2, the plaintiff may enter a judgment that the person whose title is asserted in the writ of summons shall recover possession of the land, with his costs. (E. 300.)

(259.)  
Action for land  
and damages.

8. Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, or double value in respect of the premises claimed or any part of them, or damages for breach of contract upon a writ for recovery of land, if the defendant makes default as mentioned in Rule 2, or if there be more than one defendant, some or one of the defendants make such default, the plaintiff may enter judgment against the defaulting defendant or defendants, and proceed as mentioned in Rules 4 and 5. (E. 301.)

(260.)  
Defence as to  
part.

9. If the plaintiff's claim be for a debt or liquidated demand, the detention of goods and pecuniary damages, or for any of such matters, or for the recovery of land, and the defendant delivers a defence, which purports to offer an answer to part only of the plaintiff's alleged cause of action, the plaintiff may by leave of the Court or a Judge enter judgment, final or interlocutory, as the case may be, for the part unanswered; provided that the unanswered part consists of a separate cause of action, or is severable from the rest, as in the case of part of a debt or liquidated demand; provided also that, where there is a counter-claim, execution on any such judgment as above mentioned in respect of the plaintiff's claim shall not issue without leave of the Court or a Judge. (E. 302.)

(261.)  
Other actions.

10. In all other actions than those in the preceding Rules of this Order mentioned, if the defendant makes default in delivering a defence, the plaintiff may set down the action on motion for judgment, and such judgment shall be given as upon the statement of claim the Court or a Judge shall consider the plaintiff to be entitled to. (E. 304.)

(262.)  
Default by one  
of several de-  
fendants.

11. Where, in any such action as mentioned in the last preceding Rule, there are several defendants, then, if one of such defendants make such default as aforesaid, the plaintiff may either (if the cause of action be severable) set

down the action at once on motion for judgment against the defendant so making default, or may set it down against him at the time when it is entered for trial, or set down on motion for judgment against the other defendants. (E. 305.)

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rr. 11-14.

12. If the plaintiff does not deliver a reply, or any party does not deliver any subsequent pleading, within the period allowed for that purpose, the pleadings shall be deemed to be closed at the expiration of that period, and all the material statements of fact in the pleading last delivered shall be deemed to have been denied and put in issue. (E. 306.)

(263.)  
Default in reply  
or subsequent  
pleadings.

13. In any case in which issues arise in an action other than between plaintiff and defendant, if any party to any such issue makes default in delivering any pleading, the opposite party may apply to the Court or a Judge for such judgment, if any, as upon the pleadings he may appear to be entitled to. And the Court or Judge may order judgment to be entered accordingly, or may make such other order as may be necessary to do complete justice between the parties. (E. 307.)

(264.)  
Remedy of third  
party.

14. Any judgment by default, whether under this Order or under any other of these Rules, may be set aside by the Court or a Judge, upon such terms as to costs or otherwise as such Court or Judge may think fit. (E. 308.)

(265.)  
Setting aside  
judgment by de-  
fault.

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### ORDER XXVIII.

Order XXVIII.  
rr. 1, 2.

#### AMENDMENT.

1. The Court or a Judge may, at any stage of the proceedings, allow either party to alter or amend his indorsement, or pleadings, in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. (E. 309.)

(266.)  
Amendment of  
indorsement and  
pleadings.

2. The plaintiff may, without any leave, amend his statement of claim, whether indorsed on the writ or not, once at any time before the expiration of the time limited for reply and before replying, or, where no defence is delivered, at any time before the expiration of four weeks from the appearance of the defendant who shall have last appeared. (E. 310.)

(267.)  
Amendment by  
plaintiff without  
leave.

## Order XXVIII.

## rr. 3-9.

(268.)  
Amendment by  
defendant with-  
out leave.

3. A defendant who has set up any counter-claim or set-off may, without any leave, amend such counter-claim or set-off at any time before the expiration of the time allowed him for answering the reply and before such answer, or in case there be no reply, then at any time before the expiration of twenty-eight days from defence. (E. 311.)

(269.)  
Disallowance of  
amendment.

4. Where any party has amended his pleading under either of the last two preceding Rules, the opposite party may, within eight days after the delivery to him of the amended pleading, apply to the Court or a Judge to disallow the amendment, or any part thereof, and the Court or Judge may, if satisfied that the justice of the case requires it, disallow the same, or allow it subject to such terms as to costs or otherwise as may be just. (E. 312.)

(270.)  
Pleading after  
amendment.

5. Where any party has amended his pleading under Rules 2 or 3, the opposite party shall plead to the amended pleading, or amend his pleading, within the time he then has to plead or within eight days from the delivery of the amendment, whichever shall last expire; and in case the opposite party has pleaded before the delivery of the amendment, and does not plead again or amend within the time above mentioned, he shall be deemed to rely on his original pleading in answer to such amendment. (E. 313.)

(271.)  
Application for  
leave to amend.

6. In all cases not provided for by the preceding Rules of this Order, application for leave to amend may be made by either party to the Court or a Judge, or to the Judge at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise as may be just. (E. 314.)

(272.)  
Time limited for  
amendment.

7. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, such order to amend shall, on the expiration of such limited time as aforesaid, or of such fourteen days, as the case may be, become *ipso facto* void, unless the time is extended by the Court or a Judge. (E. 315.)

(273.)  
Amendment,  
how made.

8. An indorsement or pleading may be amended by written alterations in the copy which has been delivered, and by additions on paper to be interleaved therewith if necessary. (E. 316.)

(274.)  
Marking amend-  
ed pleading.

9. Whenever any indorsement or pleading is amended, the same, when amended, shall be marked with the date of the order, if any, under which the same is so amended, and of the day on which such amendment is made, in manner following, viz: "Amended day of pursuant to order of dated the day of ." (E. 317.)

10. Whenever any indorsement or pleading is amended, such amended document shall be delivered to the opposite party within the time allowed for amending the same. (E. 318.)

Order XXVIII.  
rr. 10—14.

(275.)  
Delivery of amended pleadings.

11. Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court or a Judge on motion or summons without any appeal. (E. 319.)

(276.)  
Clerical errors.

12. The Court or a Judge may at any time, and on such terms as to costs or otherwise as the Court or Judge may think just, amend any defect or error in any proceedings, and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceedings. (E. 320.)

(277.)  
General power of amendment.

13. The costs of and occasioned by any amendment made pursuant to Rules 2 and 3 of this Order shall be borne by the party making the same, unless the Court or a Judge shall otherwise order. (E. 321.)

(278.)  
Costs.

14. In appeals brought before it the Court shall have all the powers and duties in reference to the amendment of proceedings which the Court has in causes originating therein. (C. 2 of 1882, Sec. 8.)

(279.)  
Amendment by Court of Appeal.

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ORDER XXIX.

Order XXIX.  
rr. 1, 2.

SUMMONS FOR DIRECTIONS.

1. In every cause or matter one general Summons for directions may be taken out at any time by any party with respect to the following matters and proceedings: particulars of claim, defence or reply, statement of special case, discovery (including interrogatories), commissions and examinations of witnesses, mode of trial (including proceedings in lieu of demurrer, trial on motion for judgment, and reference), place of trial, and any other matter or proceeding in the cause or matter previous to trial. (E. 340.)

(280.)  
General summons for directions.

2. Such summons for directions shall be a summons returnable in not less than four days, in the Form No. 3 in Appendix K., with such variations as circumstances may require, and shall be addressed to and served upon all such parties to the cause or matter as may be affected thereby. The applicant shall, so far as practicable, include in the summons all or as many of the above-mentioned matters and proceedings as, having regard to the nature of the cause or matter, can conveniently be dealt with by the

(281.)  
Practice on such summons.



Order XXI.  
r. 3.

order and directions of the Court or Judge. Upon the hearing of the summons, any party to whom the summons is addressed shall be at liberty to apply for any order or directions as to any of the above-mentioned matters or proceedings which he may desire, and thereupon, after giving notice to such parties (if any) as the Court or Judge may direct, any order may be made, and all necessary directions given, as to all or any of such matters and proceedings as may be just, whether applied for or not; such order shall be in the Form No. 4 in Appendix K., with such variations as circumstances may require. (E. 341.)

(282.)  
Unnecessary  
costs.

3. If, upon any other application as to any of the above-mentioned matters or proceedings, it shall appear to the Court or Judge that the application is one that could and ought to have been included in or made upon the general summons for directions, such application shall be granted only at the costs of the party making the same. (E. 342.)

Order XXX.  
rr. 1, 2.

## ORDER XXX.

## DISCOVERY AND INSPECTION.

(283.)  
Interrogatories.

1. In any action where relief by way of damages or otherwise is sought on the ground of fraud or breach of trust, the plaintiff may at any time after delivering his statement of claim, and a defendant may, at or after the time of delivering his defence, without any order for that purpose, and in every other cause or matter the plaintiff or defendant may by leave of the Court or a Judge deliver interrogatories in writing for the examination of the opposite parties, or any one or more of such parties, and such interrogatories, when delivered, shall have a note at the foot thereof, stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose: Provided also that interrogatories which do not relate to any matters in question in the cause or matter shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness. (E. 343.)

Further inter-  
rogatories.

Where irrele-  
vant.

(284.)  
Leave to inter-  
rogate.

2. In deciding upon any application for leave to exhibit interrogatories, the Court or Judge shall take into account any offer which may be made by the party sought to be interrogated, to deliver particulars, or to make

admissions, or to produce documents relating to the matters in question, or any of them. (E. 344.) Order XXX.  
rr. 3-10.

3. In adjusting the costs of the cause or matter inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing authority or of the Court or Judge, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault. (E. 345.) (285.)  
Costs.

4. Interrogatories shall be in the Form No. 6 in Appendix B., with such variations as circumstances may require. (E. 346.) (286.)  
Form of inter-  
rogatories.

5. If any party to a cause or matter be a body corporate or a joint stock company, whether incorporated or not, or any other body of persons empowered by law to sue or to be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation, company, or body, and an order may be made accordingly. (E. 347.) (287.)  
Corporations  
and other  
bodies.

6. Any objection to answering any one or more of several interrogatories on the ground that it or they is or are scandalous or irrelevant, or not *bona fide* for the purpose of the cause or matter, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer. (E. 348.) (288.)  
Objections to in-  
terrogatories.

7. Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary, or scandalous; and any application for this purpose may be made within seven days after service of the interrogatories. (E. 349.) (289.)  
Setting aside and  
striking out.

8. Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as a Judge may allow. (E. 350.) (290.)  
Time for answer  
ing.

9. An affidavit in answer to interrogatories shall be in the Form No. 7 in Appendix B., with such variations as circumstances may require, (E. 351.) (291.)  
Affidavit in  
answer.

10. No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court or a Judge on motion or summons. (E. 352.) (292.)  
Exceptions to  
affidavit.

Order XXX.  
rr. 11—15.

(293.)  
Insufficient  
answers.

11. If any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court or a Judge for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further, either by affidavit or by *viva voce* examination, as the Judge may direct. (E. 353.)

(294.)  
Discovery of  
documents.

12. Any party may, without filing any affidavit, apply to the Court or a Judge for an order directing any other party to any cause or matter to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court or Judge may either refuse or adjourn the same, if satisfied that such discovery is not necessary or not necessary at that stage of the cause or matter, or make such order, either generally or limited to certain classes of documents, as may in their or his discretion be thought fit. (E. 354.)

(295.)  
Affidavit of dis-  
covery.

13. The affidavit, to be made by a party against whom such order as is mentioned in the last preceding Rule has been made, shall specify which, if any, of the documents therein mentioned he objects to produce, and it shall be in the Form No. 8 in Appendix B, with such variations as circumstances may require. (E. 355.)

(296.)  
Production of  
documents by  
order.

14. It shall be lawful for the Court or a Judge, at any time during the pendency of any cause or matter, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such cause or matter, as the Judge or Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just. (E. 356.)

(297.)  
Notice to pro-  
duce documents  
referred to in  
pleadings or aff-  
davits.

15. Every party to a cause or matter shall be entitled, at any time, by notice in writing, to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his solicitor, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such cause or matter, unless he shall satisfy the Court or a Judge that such document relates only to his own title, he being a defendant to the cause or matter, or that he had some other cause or excuse which the Court or Judge shall deem sufficient for not complying with such notice; in which case the Court or Judge may allow the same to be put in evidence on such terms as to costs and otherwise as the Court or Judge shall think fit. (E. 357.)

Effect of non-  
compliance.

16. Notice to any party to produce any documents referred to in his pleading or affidavits shall be in the Form No. 9 in Appendix B, with such variations as circumstances may require. (E. 358.)

Order XXX.  
rr. 16-20.  
(298.)  
Form of notice.

17. The party to whom such notice is given shall, within two days from the receipt of such notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in Rule 13, or if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then within four days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, or in the case of banker's books or other books of account, or books in constant use for the purpose of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice shall be in the Form No. 10 in Appendix B., with such variations as circumstances may require. (E. 359.)

(299.)  
Production on notice.

Banker's books, &c.

18. If the party served with notice under Rule 17 omits to give such notice of a time for inspection, or objects to give inspection, or offers inspection elsewhere than at the office of his solicitor, the Judge may, on the application of the party desiring it, make an order for inspection in such place and in such manner as he may think fit ; and, except in the case of documents referred to in the pleadings or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. (E. 360.)

(300.)  
Order for inspection on default.

19. If the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court or a Judge may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the cause or matter, or that for any other reason it is desirable that any issue or question in dispute in the cause or matter should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection. (E. 362.)

(301.)  
Decision of question on which right to discovery depends.

20. If any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall be liable to attachment. He shall also

(302.)  
Consequence of disobedience.

Order XXX.  
 ¶. 21—25. if a plaintiff be liable to have his action dismissed for want of prosecution, and if a defendant to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating may apply to the Court or a Judge for an order to that effect, and an order may be made accordingly. (E. 363.)

(303.)  
 Application for attachment. 21. Service of an order for interrogatories or discovery or inspection made against any party on his solicitor shall be sufficient service to found an application for an attachment for disobedience to the order. But the party against whom the application for an attachment is made may show in answer to the application that he has had no notice or knowledge of the order. (E. 364.)

(304.)  
 Attachment of solicitor. 22. A solicitor upon whom an order against any party for interrogatories or discovery or inspection is served under the last preceding Rule, who neglects without reasonable excuse to give notice thereof to his client, shall be liable to attachment. (E. 365.)

(305.)  
 Answers to be evidence. 23. Any party, may, at the trial of a cause, matter or issue, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories, without putting in the others or the whole of such answer: Provided always, that in such case the Judge may look at the whole of the answers, and if he shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, he may direct them to be put in. (E. 366.)

(306.)  
 Costs. 24. In every cause, or matter, the costs of discovery, by interrogatories or otherwise, shall, unless otherwise ordered by the Court or a Judge, be secured in the first instance as provided by Rule 25 of this Order, by the party seeking such discovery, and shall be allowed as part of his costs where, and only where, such discovery shall appear to the Judge at the trial, or, if there is no trial, to the Court or a Judge, or shall appear to the taxing authority, to have been reasonably asked for. (E. 367.)

(307.)  
 Deposit for costs. 25. Any party seeking discovery by interrogatories shall, before delivery of interrogatories, pay into Court to a separate account in the action, to be called "Security for Costs Account," to abide further orders, the sum of \$20, and, if the number of folios exceeds five, the further sum of \$1, for every additional folio. Any party seeking discovery otherwise than by interrogatories shall, before

making application for discovery, pay into Court, to a like account, to abide further order, the sum of \$20, and may be ordered further to pay into Court as aforesaid, such additional sum as the Court or a Judge shall direct. The party seeking discovery shall, with his interrogatories or order for discovery, serve a copy of the receipt for the said payment into Court, and the time for answering or making discovery shall in all cases commence from the date of such service. The party from whom discovery is sought shall not be required to answer or make discovery unless and until the said payment has been made. (E. 368.)

Order XXX,  
rr. 26—30.

Receipt.

26. Unless the Court or a Judge shall at or before the trial otherwise order, the amount standing to the credit of the "Security for Costs Account" in any cause or matter, shall, after the cause or matter has been finally disposed of, be paid out to the party by whom the same was paid in, on his request, or to his solicitor on such party's written authority, in the event of the costs of the cause or matter being adjudged to him, but, in the event of the Court or Judge ordering him to pay the costs of the cause or matter, the amount in Court shall be subject to a lien for the costs ordered to be paid to any other party. (E. 369.)

(308.)  
Disposal of de-  
posit.

27. In any action against or by a sheriff in respect of any matters connected with the execution of his office, the Court or a Judge may, on the application of either party, order that the affidavit to be made in answer either to interrogatories or to an order for discovery, shall be made by the officer or person actually concerned. (E. 370.)

(309.)  
Discovery by  
Sheriff's officer.

28. Where the party required to produce documents is a corporation aggregate, the affidavit shall be made by one of the officers of the corporation. (O. 225.)

(310.)  
Affidavit by offi-  
cer, &c., of cor-  
poration.

29. The deponent in any affidavit provided for in the next preceding Rule shall be subject to cross-examination, and his affidavit shall have the same effect, as nearly as may be, as the affidavit of a party, unless where the Court or Judge sees reason for holding otherwise. (O. 226.)

(311.)  
Cross-examina-  
tion of deponent.

30. Persons who have ceased to be officers of a corporation may be examined in the same manner as existing officers. (O. 227.)

(312.)  
Former officers  
examined.

Order XXXI.  
rr. 1-5.

## ORDER XXXI.

## ADMISSIONS.

(313.)  
Admission of op-  
ponent's state-  
ment.

1. Any party to a cause or matter may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party. (E. 371.)

(314.)  
Notice to admit  
documents.

2. Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the cause or matter may be, unless at the trial or hearing the Court or a Judge shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the taxing authority, a saving of expense. (E. 372.)

(315.)  
Form of notice.

3. A notice to admit documents shall be in the Form No. 11 in Appendix B., with such variations as circumstances may require. (E. 373.)

(316.)  
Notice to admit  
facts.

4. Any party may, by notice in writing, at any time not later than seven days before the day for which notice of trial has been given, call on any other party to admit, for the purposes of the cause, matter, or issue only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the Court or a Judge, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the cause, matter, or issue may be, unless at the trial or hearing the Court or a Judge certify that the refusal to admit was reasonable, or unless the Court or a Judge shall at any time otherwise order or direct: Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular cause, matter, or issue, and not as an admission to be used against the party on any other occasion, or in favour of any person other than the party giving the notice: Provided also that the Court or a Judge may at any time allow any party to amend or withdraw any admission so made on such terms as may be just. (E. 374.)

(317.)  
Forms of notice  
and admissions.

5. A notice to admit facts shall be in the Form No. 12 in Appendix B., and admissions of facts shall be in the Form No. 13 in Appendix B., with such variations as circumstances may require. (E. 375.)

6. Any party may at any stage of a cause or matter, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court or a Judge for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the Court or a Judge may upon such application make such order, or give such judgment, as the Court or Judge may think just. (E. 376.)

Order XXXI.  
rr. 6-9.

(318.)  
Judgment on admissions.

7. An affidavit of the solicitor or his clerk of the due signature of any admissions made in pursuance of any notice to admit documents or facts, shall be sufficient evidence of such admissions, if evidence thereof be required. (E. 377.)

(319.)  
Proof of signatures.

8. Notice to produce documents shall be in the Form No. 14 in Appendix B, with such variations as circumstances may require. An affidavit of the solicitor, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served. (E. 378)

(320.)  
Form of notice to produce.

9. If a notice to admit or produce comprises documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice. (E. 379.)

(321.)  
Unnecessary costs.

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ORDER XXXII.

ISSUES, INQUIRIES, AND ACCOUNTS.

Order XXXII.  
rr. 1-3.

1. Where in any cause or matter it appears to the Court or a Judge that the issues of fact in dispute are not sufficiently defined, the parties may be directed to prepare issues, and such issues shall, if the parties differ, be settled by the Court or a Judge. (E. 380.)

(322.)  
Issues to be settled if necessary.

2. The Court or a Judge may, at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be made or taken, notwithstanding that it may appear that there is some special or further relief sought for or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner. (E. 381.)

(323.)  
When inquiries or accounts taken.

3. The Court or a Judge may, either by the judgment or order directing an account to be taken, or by any subsequent order, give special directions with regard to the mode in which the account is to be taken or vouched, and in par-

(324.)  
Accounts, how taken.



Order XXXII. Particular may direct that in taking the account, the books of account in which the accounts in question have been kept, shall be taken as *prima facie* evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they may be advised. (E. 382.)

(325.)  
Verification of account by affidavit. 4. Where any account is directed to be taken, the accounting party, unless the Court or a Judge shall otherwise direct, shall make out his account and verify the same by affidavit. The items on each side of the account shall be numbered consecutively, and the account shall be referred to by the affidavit as an exhibit, and be filed with the proper officer. (E. 383.)

(326.)  
Notice of claim beyond admission. 5. Any party seeking to charge any accounting party beyond what he has by his account admitted to have received shall give notice thereof to the accounting party, stating, so far as he is able, the amount sought to be charged and the particulars thereof in a short and succinct manner. (E. 384.)

(327.)  
Outstanding estate to be inquired of. 6. Every judgment or order for a general account of the personal estate of a testator or intestate shall contain a direction for an inquiry what parts (if any) of such personal estate are outstanding or undisposed of, unless the Court or a Judge shall otherwise direct. (E. 385.)

(328.)  
Directions to be numbered. 7. Where, by any judgment or order, whether made in Court or in Chambers, any accounts are directed to be taken or inquiries to be made, each such direction shall be numbered so that, as far as may be, each distinct account and inquiry may be designated by a number, and such judgment or order shall be in the Form No. 24, in Appendix L., with such variations as the circumstances of the case may require. (E. 386.)

(329.)  
Form of judgment. Allowances to be made. 8. In taking any account directed by any judgment or order, all just allowances shall be made without any direction for that purpose. (E. 387.)

(330.)  
Expediting accounts or inquiries. 9. If it shall appear to the Court or a Judge that there is any undue delay in the prosecution of any accounts or inquiries, or in any other proceedings under any judgment or order, the Court or a Judge may require the party having the conduct of the proceedings under any judgment or order, or any other party, to explain the delay, and may thereupon make such order with regard to expediting the proceedings or the conduct thereof, or the stay thereof, and as to the costs of the proceedings, as the circumstances of the case may require; and for the purposes aforesaid, any party may be directed to summon the persons whose attendance is required, and to conduct any proceedings and carry out any directions which may be given; and

any costs of such party, so directed, shall be paid by such parties or out of such funds as the Court or Judge may direct; and if any such costs be not otherwise paid, the same shall be paid out of such moneys (if any) as may be provided by Parliament. (E. 388.)

Order XXXII.  
r. 10.

10. In the event of a Referee declining to act, or dying, or becoming disqualified, before he has made his report, the parties may, or if they cannot agree a Judge may, on application of either party, appoint a new Referee. (O. 245, c.)

(331.)  
Substituted Referee.

ORDER XXXIII.

Order XXXIII.  
r. 1-3.

1.—SPECIAL CASE.

1. The parties to any cause or matter, at any stage of the cause or matter, or without any previous proceedings having been instituted, may concur in stating the questions of law arising therein in the form of a special case for the opinion of the Court. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised thereby. Upon the argument of such case the Court and the parties shall be at liberty to refer to the whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial. (E. 389 & P. A. 225.)

(332.)  
Parties may state special case.

Documents.

Inference of fact.

2. If it appear to the Court or a Judge, that there is in any cause or matter a question of law, which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to a Referee or an Arbitrator, the Court or Judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the Court, either by special case or in any such other manner as the Court or Judge may deem expedient, and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed. (E. 390.)

(333.)  
Preliminary question of law.

Special case without consent.

3. Every special case shall, as heretofore, be printed by the plaintiff and signed by the several parties or their counsel or solicitors, and shall be filed by the plaintiff.

(334.)  
Printing case.

Order XXXIII. Printed copies for the use of the Judges shall be delivered  
 rr. 4—8. by the plaintiff. (E. 391.)

(335.)  
 Persons under  
 disability.

4. No special case in any cause or matter to which a married woman (not being a party thereto in respect of her separate property or of any separate right of action by or against her), infant, or person of unsound mind not so found by inquisition or judicial decision is a party, shall be set down for argument without leave of the Court or a Judge, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such married woman, infant, or person of unsound mind, are true. (E. 392)

(336.)  
 Entry for argu-  
 ment.

5. Either party may enter a special case for argument by delivering to the proper officer a memorandum of entry in the usual form, and also, if any married woman, infant, or person of unsound mind not so found by inquisition or judicial decision be a party to the cause or matter, producing a copy of the order giving leave to enter the same for argument. (E. 393.)

(337.)  
 Agreement as to  
 payment of  
 money and costs.

6. The parties to a special case may, if they think fit enter into an agreement in writing, that on the judgment of the Court being given in the affirmative or negative of the questions of law raised by the special case, a sum of money, fixed by the parties, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, either with or without costs of the cause or matter; and the judgment of the Court may be entered for the sum so agreed or ascertained, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless stayed on appeal. (E. 394)

(338.)  
 Application  
 Order.

7. This Order shall apply to every special case stated of: in a cause or matter, or in any proceeding incidental thereto. (E. 395.)

## 2.—ISSUES OF FACT WITHOUT PLEADINGS.

(339.)  
 Formal plead-  
 ings may be dis-  
 pensed with.

8. When the parties to a cause or matter are agreed as to the questions of fact to be decided between them, they may, after writ issued and before judgment, by consent and order of the Court or a Judge, proceed to the trial of any such questions of fact without formal pleadings; and such questions may be stated for trial in an issue in the Form No. 15, in Appendix B, with such variations as circumstances may require, and such issue may be entered for trial and tried in the same manner as any issue joined

in an ordinary action, and the proceedings shall be under the control and jurisdiction of the Court or Judge, in the same way as the proceedings in an action. (E. 397.)

9. The Court or a Judge may, by consent of the parties, order that, upon the finding in the affirmative or negative of such issue as in the last preceding Rule mentioned, a sum of money, fixed by the parties, or to be ascertained upon a question inserted in the issue for that purpose, shall be paid by one of the parties to the other of them, either with or without the costs of the cause or matter. (E. 398.)

(340.)  
Order for pay-  
ment on finding  
of issue.

10. Upon the finding of any such issue, as in Rule 8 mentioned, judgment may be entered for the sum so agreed or ascertained as aforesaid, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless the Court or a Judge shall otherwise order for the purpose of giving either party an opportunity for moving to set aside the finding or for a new trial. (E. 399.)

(341.)  
Judgment ac-  
cording to agree-  
ment.

11. The proceedings upon such issue, as in Rule 8 mentioned, may be recorded at the instance of either party, and the judgment, whether actually recorded or not, shall have the same effect as any other judgment in a contested action. (E. 400.)

(342.)  
Effect of judg-  
ment.

ORDER XXXIV.

Order XXXIV.

TRIAL.

rr. 1, 2.

1.—Place.

1. There shall be no local venue for the trial of any action, except when otherwise provided by Statute. Every action shall, unless the Court or a Judge otherwise orders, be tried in the county or place named on the statement of claim, or (where no statement of claim has been delivered or required) by a notice in writing to be served on the defendant, or his solicitor, within six days after appearance. Where no place of trial is named, the place of trial shall, unless the Court or a Judge otherwise order, be the county in which the defendant has been required to file his appearance. (E. 425.)

(343.)  
No local venue.

2.—Mode of Trial.

2. Causes or matters which would heretofore have been deemed of an equitable nature shall be tried by a Judge without a jury, unless the Court or a Judge shall otherwise order. (E. 427.)

(344.)  
Equity causes.

**Order XXXIV.** 3. The Court or a Judge may, if it shall appear desirable, direct a trial without a jury of any question or issue of fact, or partly of fact and partly of law, arising in any cause or matter which previously to the nineteenth day of April, A. D. 1884 could, without any consent of parties, have been tried without a jury. (E. 428.)

(346.)  
Power to dispense with jury in cases where power existed before.

4. The Court or a Judge may direct the trial without a jury of any cause, matter or issue requiring any prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in their or his opinion conveniently be made with a jury. (E. 429.)

(347.)  
Power to order jury

5. In any other cause or matter, upon the application of any party thereto for a trial with a jury of the cause or matter or any issue of fact, an order may be made for a trial with a jury. (E. 430.)

(348.)  
Cases tried without jury.

6. (a.) In every cause or matter, unless under the provisions of Rule 5 of this Order a trial with a jury is ordered, or under Section 20 of the Act a trial is required to be had with a jury, the mode of trial shall be by a Judge without a jury; provided that in any such case the Court or a Judge may at any time order any cause, matter, or issue to be tried by a Judge with a jury, or by a Judge sitting with assessors, or by an official referee or special referee with or without assessors.

Special jury at plaintiff's instance.

(b.) The plaintiff in any cause or matter in which he is entitled to a jury, may have the issues tried by a special jury upon giving notice in writing to that effect to the defendant at the time when he gives notice of requiring the jury.

Special jury at defendant's instance.

(c.) The defendant in any cause or matter in which he is entitled to a jury, may have the issue tried by a special jury on giving notice in writing to that effect at the time when he gives notice requiring a jury.

Order for special jury.

(d.) A Judge may at any time make an order for a special jury, upon such terms, if any, as to costs and otherwise, as may be just. (E. 431.)

(349.)  
Trial of different questions in different modes.

7. Subject to the provisions of the preceding Rules of this Order, the Court or a Judge may, in any cause or matter, at any time or from time to time, order that different questions of fact arising therein be tried by different modes of trial, or that one or more questions of fact be tried before the others, and may appoint the places for such trials, and in all cases may order that one or more issues of fact be tried before any other or others. (E. 432.)

(350.)  
One Judge to try.

8. Every trial of any question or issue of fact with a jury shall be by a single Judge, unless such trial be specially ordered to be by two or more Judges. (E. 433.)

9. Nothing in this Order shall affect any proceedings under any statutory provisions relating to arbitration. Order XXXIV.  
rr. 9-17.  
(351.)  
Arbitrations.  
(E. 434.)

3.—*Notice and Entry of Trial.*

10. Notice of trial may be given in any cause or matter by the plaintiff or other party in the position of plaintiff. (352.)  
Plaintiff to give  
the notice. Such notice may be given with the reply (if any) whether it closes the pleadings or not, or at any time after the issues of fact are ready for trial. (E. 435.)

11. If the plaintiff does not within six weeks after the close of the pleadings, or within such extended time as the Court or a Judge may allow, give notice of trial, the defendant may, before notice of trial given by the plaintiff, give notice of trial, or may apply to the Court or Judge to dismiss the action for want of prosecution; and on the hearing of such application, the Court or a Judge may order the action to be dismissed accordingly, or may make such other order, and on such terms, as to the Court or Judge may seem just. (353.)  
Defendant may  
do so. (E. 436.)

12. Notice of trial shall state whether it is for the trial of the cause or matter or of issues therein, and the place and day for which it is to be entered for trial. It shall be in the Form No. 16, in Appendix B., with such variations as circumstances may require. (354.)  
Form of notice. (E. 437.)

13. Ten days' notice of trial shall be given, unless the party to whom it is given has consented, or is under terms, or has been ordered to take short notice of trial; and shall be sufficient in all cases, unless otherwise ordered by the Court or a Judge. Short notice of trial shall be five days' notice, unless otherwise ordered. (355.)  
Length of notice. (E. 438.)

14. Notice of trial shall be given before entering the trial; and the trial may be entered notwithstanding that the pleadings are not closed provided that notice of trial has been given. Either party after notice of trial may enter for trial. If both parties enter the action for trial it shall be tried in the order of the plaintiff's entry. (356.)  
Who may enter  
for trial. (E. 439 & O. 261.)

15. Unless the trial shall be entered, within the time limited therefor, by one party or the other, the notice of trial shall be no longer in force, unless leave for a later entry be given by the Court or a Judge. (357.)  
Notice of trial to  
lapse if no entry.

16. Notice of trial for Halifax shall not be or operate as for any particular sittings; but shall be deemed to be for any day after the expiration of the notice on which the trial may come on in its order on the list. (358.)  
Notice of trial in  
Halifax. (E. 441.)

17. Notice of trial elsewhere than in Halifax shall be deemed to be for the first day of the then next term or sittings at the place for which notice of trial is given. (359.)  
Notice else-  
where. (E. 442.)

**Order XXXIV.****rr. 18—25.****(360.)**  
Countermand of  
notice.**(361.)**  
Copy of plead-  
ings for Judge.**(362.)**  
Entry for trial.**(363.)**  
Docket, how  
made up.**(364.)**  
Non-appearance  
of defendant.**(365.)**  
Non-appearance  
of plaintiff.**(366.)**  
Setting aside  
judgments  
where one party  
does not appear.**(367.)**  
Postponement of  
trial.

18. No notice of trial shall be countermanded except by consent or by leave of the Court or a Judge, which leave may be given subject to such terms, as to costs or otherwise, as may be just. (E. 443.)

19. The party entering the trial shall deliver to the proper officer a copy of the whole of the pleadings, for the use of the Judge at the trial, on the day before the sitting of the Court at which the action is to be tried, such copy to be certified by the Prothonotary having charge of the pleadings filed. (E. 454 & O. 262.)

20. Entries for trials must be given to the Prothonotary on or before the Tuesday preceding the first day of the sittings, or term, at which the causes are to be tried. (P. A. 200)

21. In making up the dockets separate lists shall be made of trials with juries, and trials without juries. On each list the seniority of the cause shall be determined by the dates of the issue of the respective writs. All causes entered that shall have been on the list of the preceding term or sittings, and the trial of which shall have been deferred without the fault of the plaintiff, or party then seeking to bring the cause to trial by notice of trial or entry, or which were not tried for want of time, shall be placed on the docket in the relative order in which they stood on the docket of such preceding term or sittings. (P. A. 201.)

*4.—Proceedings at Trial.*

22. If, when a trial is called on, the plaintiff appears, and the defendant does not appear, the plaintiff may prove his claim so far as the burden of proof lies upon him. (E. 455.)

23. If, when a trial is called on, the defendant appears, and the plaintiff does not appear, the defendant, if he has no counter-claim, shall be entitled to judgment dismissing the action, but if he has a counter-claim, then he may prove such counter-claim so far as the burden of proof lies upon him. (E. 456.)

24. Any verdict or judgment obtained where one party does not appear at the trial, may be set aside by the Court or a Judge upon such terms as may seem fit, upon an application made within six days after the trial. Such application may be made at the sittings or term at which the trial took place, or in Halifax. (E. 457.)

25. The Judge may, if he think it expedient for the interests of justice, postpone or adjourn a trial for such time, and to such place, and upon such terms, if any, as he shall think fit. (E. 458.)

26. Where, through accident or mistake or other cause, any party omits or fails to prove some fact material to his case, the Judge may proceed with the trial, subject to such fact being afterwards proved, at such time, and subject to such terms and conditions as to costs and otherwise, as the Judge shall direct; and, if the case is being tried by a jury, the Judge may direct the jury to find a verdict as if such fact had been proved, and the verdict shall take effect on such fact being afterwards proved as directed; and, if not so proved, judgment shall be entered for the opposite party, unless the Court or a Judge otherwise directs. This rule shall not apply to actions for libel or slander. (O. 271.)

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rr. 26—31.

(368.)  
Evidence omitted by accident or mistake, how supplied.

27. No rule shall be granted for the continuance of a cause upon the ground of the absence of a material witness, unless the affidavit upon which the rule is applied for shall, in addition to the usual grounds, distinctly state that the party so applying believes and is advised he has a just defence upon the merits of the case (or to the action or counter-claim, as the case may be), and that the application is not made solely for delay, but to enable the applicant to substantiate his defence. (P. A. 207.)

(369.)  
Absence of material witness. Affidavit.

28. Where a party is brought up to attend the trial or hearing of a cause or matter by virtue of any writ of *habeas corpus* duly issued, and by reason of the pressure of other business, or from any other cause, the trial or hearing of the cause or matter in which such party is concerned is postponed to a future day, a new writ of *habeas corpus* may be issued for such future day, if the Court or a Judge shall so direct, without payment of any fee. (E. 459.)

(370.)  
Witness under *habeas corpus*.

29. Upon a trial with a jury, the addresses to the jury shall be regulated as heretofore. (E. 460.)

(371.)  
Addresses to jury.

30. In actions for libel or slander, in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in chief, with a view to the mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the Judge, unless seven days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence. (E. 461.)

(372.)  
Evidence in mitigation in libel and slander.

31. The Judge may in all cases disallow any questions put in cross-examination of any party or other witness which may appear to him to be vexatious, and not relevant to any matter proper to be inquired into in the cause or matter. (E. 462.)

(373.)  
Restricting cross-examination.



**Order XXXIV.** 32. The Judge may, at or after the trial, direct that judgment be entered for any or either party, or adjourn the case for further consideration, or leave any party to move for judgment. No judgment shall be entered after a trial without the order of the Court or Judge. (E. 463.)

**rr. 32—40.**  
(374.)  
Judge after trial may adjourn case for further consideration.

33. The Prothonotary or other proper officer present at any hearing or trial, shall make a note of the times at which such hearing or trial shall commence and terminate respectively, on each day on which the same shall take place. (E. 464.)

(375.)  
Note of proceedings at trial.

34. Upon every trial the proper officer shall enter all such findings of fact as the Judge may direct to be entered, and the directions, if any, of the Judge as to judgment, and the certificates, if any, granted by the Judge, in a book to be kept for the purpose. (E. 465.)

(376.)  
Book of record of trial.

#### 5.—Assessors, Commissioners, and Referees.

35. Trials with assessors shall take place in such manner and upon such terms as the Court or a Judge shall direct. (E. 467.)

(377.)  
Trials with assessors.

36. Where any cause or matter, or any question in any cause or matter, is referred to a Referee, he may, subject to the order of the Court or a Judge, hold the trial at or adjourn it to any place which he may deem most convenient, and have any inspection or view, either by himself or with his assessors (if any), which he may deem expedient for the better disposal of the controversy before him. He shall, unless otherwise directed by the Court or a Judge, proceed with the trial *de die in diem*, in a similar manner as in actions tried with a jury. (E. 472.)

(378.)  
Trials by Referee

37. Subject to any order to be made by the Court or Judge ordering the same, evidence shall be taken at any trial before a Referee, and the attendance of witnesses may be enforced by *subpœna*, and every such trial shall be conducted in the same manner, as nearly as circumstances will admit, as trials are conducted before a Judge. (E. 473.)

(379.)  
Evidence and procedure before Referee.

38. Subject to any such order as last aforesaid, the Referee shall have the same authority with respect to discovery and production of documents, and in the conduct of any reference or trial and the same power to direct that judgment be entered for any or either party, as a Judge. (E. 474.)

(380.)  
Authority of Referee.

39. Nothing in these Rules contained shall authorize any Referee to commit any person to prison or to enforce any order by attachment or otherwise. (E. 475.)

(381.)  
No authority to commit.

40. The Referee may, before the conclusion of any trial before him, or by his report under the reference made to him, submit any question arising therein for the decision of

(382.)  
Report of Referee.

the Court, or state any facts specially, with power to the Court to draw inferences therefrom, and in any such case the order to be made on such submission or statement shall be entered as the Court may direct; and the Court shall have power to require any explanation or reasons from the Referee, and to remit the cause or matter, or any part thereof, for re-trial or further consideration to the same or any other Referee; or the Court may decide the question referred to any Referee on the evidence taken before him, either with or without additional evidence, as the Court may direct. (E. 476.)

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IT. 41—45.

41. Whenever a report shall be made by a Referee, he shall on the same day cause notice thereof to be given to all the parties to the trial or the reference before him by prepaid post letter directed to the solicitors, or address for service of each party, who shall in due course of post be deemed to have notice of such report. (E. 477.)

(383.)  
Notice of Referee's report.

42. Where the report of the Referee has been made in a cause or matter, the further consideration of which has been adjourned, it shall be lawful for any party, on the hearing of such further consideration, without notice of motion or summons, to apply to the Court or Judge to adopt the report, or without leave of the Court or a Judge to give not less than four days' notice of motion, to come on with the further consideration, to vary the report or to remit the cause or matter or any part thereof for re-hearing or further consideration to the same or any other Referee. (E. 478.)

(384.)  
Motion to adopt report.

43. Where the report of the Referee has been made in a cause or matter, the further consideration of which has not been adjourned, it shall be lawful for any party by an eight days' notice of motion to apply to the Court to adopt and carry into effect the report of the Referee, or to vary the report, or to remit the cause or matter or any part thereof for re-hearing or further consideration to the same or any other Referee. (E. 479.)

(385.)  
Notice of motion.

6.—*Writ of Inquiry and Reference as to Damages.*

44. The provisions of Rules 13, 14, 18, 25, 29, 30, and 31 of this Order, shall, with the necessary modifications, apply to an inquiry pursuant to a writ of inquiry. (E. 480.)

(386.)  
Certain rules relating to trials to apply.

45. In every action or proceeding in which it shall appear to the Court or a Judge that the amount of damages sought to be recovered is substantially a matter of calculation, it shall not be necessary to issue a writ of inquiry, but the Court or a Judge may direct that the amount for which final judgment is to be entered shall be ascertained by an officer of the Court or other person, and the

(387.)  
Inquiry of damages before officer of Court, or other person.

**Order XXXIV.** attendance of witnesses and the production of documents  
**rr. 46—48.** before such officer or other person, may be compelled by *subpœna*, and such officer or other person may adjourn the inquiry from time to time, and shall indorse upon the order for referring the amount of damages to him the amount found by him, and shall deliver the order with such indorsement to the person entitled to the damages, and such and the like proceedings may thereupon be had as to taxation of costs, entering judgment, and otherwise, as upon the finding of a jury upon a writ of inquiry. (E. 481.)

(388.)  
 To what time  
 damages to be  
 assessed.

46. Where damages are to be assessed in respect of any continuing cause of action, they shall be assessed down to the time of the assessment. (E. 482.)

(389.)  
 Arrest of wit-  
 ness.

47. If it shall be made to appear to a Judge that a witness has been duly served with a *subpœna*, and his fees for travel and attendance paid or tendered to him, and that such witness refuses or neglects to attend to give evidence as required by his *subpœna*, and that his evidence is necessary and material, it shall be lawful for the Judge, in addition to any powers which he may possess for the punishment of such witness, to issue a warrant under his hand and seal directed to any sheriff or other officer or officers for the immediate arrest of such witness, to be brought before the Court or person authorized to hear the evidence, for the purpose of giving evidence in the cause. (C. 13 of 1880, sec. 23.)

(390.)  
 Form of war-  
 rant.

48. The warrant in such case as is referred to in the last preceding Rule may be in the Form No. 6, in Appendix H., with such variations as circumstances may require.

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**r. 1.**

## ORDER XXXV.

### 1.—EVIDENCE GENERALLY.

(391.)  
 Evidence at  
 trial.

1. In the absence of any agreement in writing between the solicitors of all parties, and subject to these Rules, the witnesses at the trial of any action or at any assessment of damages shall be examined *viva voce* and in open court, but the Court or Judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, on such conditions as the Court or Judge may think reasonable, or that any witness whose attendance in court ought for some sufficient cause to be dispensed with be examined by interrogatories

or otherwise before a commissioner or examiner: Provided that where it appears to the Court or Judge that the other party *bona fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit. (E. 483.)

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rr. 2-8.

Cross-examination.

2. An order to read evidence taken in another cause or matter shall not be necessary, but such evidence may, saving all just exceptions, be read on *ex parte* applications by leave of the Court or a Judge, to be obtained at the time of making any such application, and in any other case upon the party desiring to use such evidence giving two days' previous notice to the other parties of his intention to read such evidence, and on like leave of the Court or a Judge. (E. 485.)

(392.)  
Evidence in another cause to be read without order.

3. Certified copies of all writs, records, pleadings, and documents filed in the Supreme Court shall be admissible in evidence in all causes and matters and between all persons or parties, to the same extent as the original would be admissible. (E. 486.)

(393)  
Certified copies admissible.

2.—EXAMINATION OF WITNESSES.

4. The Court or a Judge may, in any cause or matter where it shall appear necessary for the purposes of justice, make any order for the examination upon oath before the Court or Judge or any officer of the Court, or any other person and at any place, of any witness or person, and may empower any party to any such cause or matter to give such deposition in evidence therein on such terms, if any, as the Court or a Judge may direct. (E. 487.)

(394.)  
Power to order examination of witness.

5. Orders for a commission to examine witnesses shall be in the Forms Nos. 33 and 34, Appendix K., and the writ of commission shall be in the Form in Appendix J., with such variations as circumstances may require. (E. 488.)

(395)  
Forms of order for commission and of writ.

6. The Court or a Judge may in any cause or matter at any stage of the proceedings order the attendance of any person for the purpose of producing any writings or other documents named in the order which the Court or Judge may think fit to be produced: Provided that no person shall be compelled to produce under any such order any writing or other document which he could not be compelled to produce at the hearing or trial. (E. 489.)

(396.)  
Order to produce.

7. Any person wilfully disobeying any order requiring his attendance for the purpose of being examined or producing any document, shall be deemed guilty of contempt of Court, and may be dealt with accordingly. (E. 490.)

(397.)  
Disobedience to order for production.

8. Any person required to attend for the purpose of being examined or of producing any document, shall be

(398.)  
Expenses of witness.

Order XXXV. entitled to the like conduct money and payment for  
rr. 9-13. expenses and loss of time as upon attendance at a trial  
in Court. (E. 491.)

(399.)  
Examiner to have copy of order and pleadings. 9. Where any witness or person is ordered to be examined before any officer of the Court, or before any person appointed for the purpose, the person taking the examination shall be furnished by the party on whose application the order was made with a copy of the writ and pleadings, if any, or with a copy of the documents necessary to inform the person taking the examination of the questions at issue between the parties. (E. 492.)

(400.)  
Mode of examination. 10. The examination shall take place in the presence of the parties, their counsel, solicitors, or agents, and the witnesses shall be subject to cross-examination and re-examination. (E. 493.)

(401.)  
Depositions, how taken and signed. 11. The depositions taken before an officer of the Court, or before any other person appointed to take the examination, shall be taken down in writing by or in the presence of the examiner, not ordinarily by question and answer, but so as to represent as nearly as may be the statement of the witness, and when completed shall be read over to the witness and signed by him in the presence of the parties, or such of them as may think fit to attend. If the witness shall refuse to sign the depositions, the examiner shall sign the same. The examiner may put down any particular question or answer if there should appear any special reason for doing so, and may put any question to the witness as to the meaning of any answer, or as to any matter arising in the course of the examination. Any questions which may be objected to shall be taken down by the examiner in the depositions, and he shall state his opinion thereon to the counsel, solicitors, or parties, and shall refer to such statement in the depositions, but he shall not have power to decide upon the materiality or relevancy of any question. (E. 494.)

Objections to questions.

(402.)  
Witness refusing to attend or give evidence. 12. If any person duly summoned by *subpœna* to attend for examination shall refuse to attend, or if, having attended, he shall refuse to be sworn or to answer any lawful question, a certificate of such refusal, signed by the examiner, shall be filed, and thereupon the party requiring the attendance of the witness may apply to the Court or a Judge *ex parte* or on notice for an order directing the witness to attend, or to be sworn, or to answer any question, as the case may be. (E. 495.)

(403.)  
Witness objecting to question. 13. If any witness shall object to any question which may be put to him before an examiner, the question so put, and the objection of the witness thereto, shall be taken down by the examiner, and transmitted by him to the

Prothonotary to be filed, and the validity of the objection shall be decided by the Court or a Judge. (E. 496.) Order XXXV.  
rr. 14—20.

14. In any case under the two last preceding Rules, the Court or a Judge shall have power to order the witness to pay any costs occasioned by his refusal or objection. (E. 497.) (404.)  
Witness may be  
ordered to pay  
costs.

15. When the examination of any witness before any examiner shall have been concluded, the original depositions, authenticated by the signature of the examiner, shall be returned by him to the Prothonotary to whom the same is returnable, and by him shall be filed. (E. 498.) (405.)  
Return of depo-  
sitions.

16. The person taking the examination of a witness under these Rules may, and if need be shall, make a special report to the Court touching such examination and the conduct or absence of any witness or other person thereon, and the Court or a Judge may direct such proceedings and make such order as upon the report they or he may think just. (E. 499.) (406.)  
Special report by  
examiner.

17. Except where by this Order is otherwise provided, or may be directed by the Court or a Judge, no deposition shall be given in evidence at the hearing or trial of the cause or matter without the consent of the party against whom the same may be offered, unless the Court or a Judge is satisfied that the deponent is dead, or beyond the jurisdiction of the Court, or unable from sickness or other infirmity to attend the hearing or trial, in any of which cases the depositions certified under the hand of the person taking the examination shall be admissible in evidence, saving all just exceptions, without proof of the signature to such certificate. (E. 500.) (407.)  
Using deposition  
in evidence.

18. Any officer of the Court or other person directed to take the examination of any witness or person may administer oaths. (E. 501.) (408.)  
Authority to ad-  
minister oaths.

19. Any party in any cause or matter may by *subpœna ad testificandum* or *duces tecum* require the attendance of any witness before an officer of the Court or other person appointed to take the examination for the purpose of using his evidence upon any proceeding in the cause or matter, in like manner as such witness would be bound to attend and be examined at the hearing or trial; and any party or witness having made an affidavit to be used, or which shall be used, on any proceeding in the cause or matter shall be bound on being served with such *subpœna* to attend before such officer or person for cross-examination. (E. 502.) (409.)  
Attendance of  
witnesses before  
officers—how  
secured.

20. Evidence taken subsequently to the hearing or trial of any cause or matter shall be taken as nearly as may (410.)  
Evidence after  
trial—how taken

**Order XXXV.** be in the same manner as evidence taken at or with a view  
**IT. 21—30.** to a trial. (E. 503.)

(411.)  
Practice as to  
cross-examina-  
tion.

21. The practice with reference to the examination, cross-examination, and re-examination of witnesses at a trial shall extend and be applicable to evidence taken in any cause or matter at any stage. (E. 504.)

(412.)  
Special direc-  
tions as to evi-  
dence.

22. The practice of the Court with respect to evidence at a trial when applied to evidence to be taken before an officer of the Court or other person in any cause or matter after the hearing or trial, shall be subject to any special directions which may be given in any case. (E. 505.)

(413.)  
Notice before  
using affidavit.

23. No affidavit or deposition filed or made before issue joined in any cause or matter shall, without special leave of the Court or a Judge, be received at the hearing or trial thereof, unless within one month after issue joined, or within such longer time as may be allowed by special leave of the Court or a Judge, notice in writing shall have been given by the party intending to use the same to the opposite party of his intention in that behalf. (E. 506.)

(414.)  
Evidence may be  
used in subse-  
quent stages.

24. All evidence taken at the hearing or trial of any cause or matter may be used in any subsequent proceedings in the same cause or matter. (E. 507.)

### 3.—SUBPÆNA.

(415.)  
*Præcipe* for sub-  
pæna.

25. Where it is intended to sue out a *subpæna*, a *præcipe* for that purpose, in the Form No. 16, in Appendix G., and containing the name or firm of the solicitor intending to sue out the same, and, where such solicitor is agent only, then also the name or firm of the principal solicitor, shall in all cases be delivered and filed. (E. 508.)

(416.)  
Forms of sub-  
pæna.

26. A writ of *subpæna* shall be in one of the Forms 1, 2, and 3, in Appendix J., with such variations as circumstances may require. (E. 509.)

(417.)  
*Subpæna* for  
Chambers.

27. Where a *subpæna* is required for the attendance of a witness for the purpose of proceedings in Chambers, such *subpæna* shall issue upon a note from the Judge. (E. 510.)

(418.)  
Number of  
names in sub-  
pæna.

28. Every *subpæna* other than a *subpæna duces tecum* shall contain three names where necessary or required, but may contain any larger number of names. (E. 511.)

(419.)  
No. in *subpæna*  
*duces tecum*.

29. No more than three persons shall be included in one *subpæna duces tecum*, and the party suing out the same shall be at liberty to sue out a *subpæna* for each person if it shall be deemed necessary or desirable. (E. 512.)

(420.)  
Correcting errors  
in *subpæna*, &c.

30. In the interval between the suing out and service of any *subpæna* the party suing out the same may correct any error in the names of parties or witnesses, and may

have the writ re-sealed upon leaving a corrected *præcipe* of such *subpœna* marked with the words "altered and re-sealed," and signed with the name and address of the solicitor suing out the same. (E. 513.)

31. The service of a *subpœna* shall be effected by delivering a copy of the writ, and of the indorsement thereon, and at the same time producing the original writ. (E. 514.)

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rr. 31—38-  
(421.)  
Service of *subpœna*.

32. Affidavits filed for the purpose of proving the service of a *subpœna* upon any defendant must state when, where, and how, and by whom, such service was effected. (E. 515.)

(422.)  
Affidavits of service.

33. The service of any *subpœna* shall be of no validity if not made within twelve weeks after the issue of the writ. (E. 516.)

(423.)  
*Subpœna*, when to be served.

4.—PERPETUATING TESTIMONY.

34. When a person shall be desirous to perpetuate the testimony of any witness he may commence an action therefor. (E. 517 & E. A., 64.)

(424.)  
Action brought to perpetuate testimony.

35. In all actions to perpetuate testimony touching any honor, title, dignity, or office, or any other matter or thing in which the Crown may have any estate or interest, the Attorney-General may be made a defendant, and in all proceedings in which the depositions taken in any such action in which the Attorney-General was so made a defendant, may be offered in evidence, such depositions shall be admissible notwithstanding any objection to such depositions upon the ground that the Crown was not a party to the action in which such depositions were taken. (E. 518.)

(425.)  
When Crown interested, Attorney General to be a party.

36. Witnesses shall not be examined to perpetuate testimony unless an action has been commenced for the purpose. (E. 519.)

(426.)  
Action must be brought.

37. No action to perpetuate the testimony of witnesses shall be set down for trial. (E. 520.)

(427.)  
Trial not necessary.

5.—FOREIGN JUDGMENT.

38. The record or other evidence of a judgment recovered in any other province or country against any person domiciled in Nova Scotia, shall not be conclusive evidence in any action brought on such judgment in any Court of this Province of the correctness of such judgment, but the defendant may controvert all or any of the facts on which such judgment is founded, or the cause of action in the suit in which such judgment was given, and may raise the same defence in such suit on such judgment as he could have done as fully as if such suit had been brought for the original cause of action. (C. 13 of 1880, sec. 27.)

(428.)  
Not conclusive evidence.



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rr. 1-6.

## ORDER XXXVI.

## 1.—AFFIDAVITS AND DEPOSITIONS.

(429.) Affidavit may be followed by cross-examination. 1. Upon any motion, petition, or summons, evidence may be given by affidavit; but the Court or a Judge may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit, and may make such interim order or otherwise as appears necessary to meet the justice of the case. (E. 521 & O. 283.)

(480.) How intitled. 2. Every affidavit shall be intitled in the cause or matter in which it is sworn; but in every case in which there are more than one plaintiff or defendant, it shall be sufficient to state the full name of the first plaintiff or defendant respectively, and that there are other plaintiffs or defendants, as the case may be; and the costs occasioned by any unnecessary prolixity in any such title shall be disallowed. (E. 522.)

(481.) Affidavit, how framed. 3. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of every affidavit which shall unnecessarily set forth matters of heresay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same. (E. 523.)

(482.) Before whom to be sworn. 4. Affidavits sworn in Nova Scotia shall be sworn before a Judge, Commissioner to administer oaths, or officer empowered under these Rules to administer oaths. (E. 524.)

(483.) Time and place of swearing to be stated. 5. Every Commissioner to administer oaths shall express the time when and the place where he shall take any affidavit, or the acknowledgment of any deed, or recognizance; otherwise the same shall not be held authentic, nor be admitted to be filed or enrolled without the leave of the Court or a Judge; and every such Commissioner shall express the time when, and the place where, he shall do any other act incident to his office. (E. 525.)

(484.) Affidavits sworn abroad. 6. All examinations, affidavits, declarations, affirmations, and attestations of honor, in causes or matters depending in the Court, and also acknowledgments required for the purpose of enrolling any deed in the Court, may be sworn and taken out of Nova Scotia, in any part of the Dominion of Canada, or in Great Britain or Ireland, or the Channel Islands, or in any colony, island, or plantation or place under the dominion of Her Majesty in foreign parts, before any Judge, Court, notary public, or person lawfully authorized to administer oaths in such country, colony

island, plantation, or place respectively, or before any of Her Majesty's consuls or vice-consuls in any foreign part out of Her Majesty's dominions, and the Judges and other officers of the Supreme Court shall take judicial notice of the seal or signature, as the case may be, of any such Court, Judge, notary public, person, consul, or vice-consul, attached, appended or subscribed to any such examinations, affidavits, affirmations, attestations of honor, declarations, acknowledgments, or to any other deed or document. (E. 526.)

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7. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject. Every affidavit shall be written or printed book-wise. No costs shall be allowed for any affidavit or part of an affidavit substantially departing from this rule. (E. 527.)

(435.)  
 Mode of drawing affidavits.

8. Every affidavit shall state the description and true place of abode of the deponent, and shall be signed by him. (E. 528.)

(436.)  
 Description of deponent.

9. In every affidavit made by two or more deponents the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents. (E. 529.)

(437.)  
 Jurat where more than one deponent.

10. Every affidavit or other proof used in a cause, matter or proceeding shall be filed. (E. 530.)

(438.)  
 Must be filed.

11. The Court or a Judge may order to be struck out from any affidavit any matter which is scandalous, and may order the costs of any application to strike out such matter to be paid as between solicitor and client. (E. 531.)

(439.)  
 Striking out parts of affidavits.

12. No affidavit, having in the jurat or body thereof any interlineation, alteration, or erasure, shall, without leave of the Court or a Judge, be read or made use of in any matter depending in Court, unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer taking the affidavit, nor in the case of an erasure unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialed in the margin of the affidavit by the officer taking it. (E. 532.)

(440.)  
 Interlineations and alterations.

13. Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent

(441.)  
 Illiterate deponents.

Order XXXVI.  
rr. 14—21. made his signature in the presence of the officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the Court or a Judge is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent. (E. 533.)

(442.)  
Defects in title  
or jurat.

14. The Court or a Judge may receive any affidavit sworn for the purpose of being used in any cause or matter, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received. (E. 534.)

(443.)  
Certified copy  
may be used.

15. A copy of an affidavit may in all cases be used, the original affidavit having been previously filed, and the copy duly authenticated with the certificate of the Prothonotary. (E. 535.)

(444.)  
Affidavit not to  
be sworn before  
solicitors, &c., of  
party.

16. No affidavit shall be sufficient if sworn before the solicitor acting for the party on whose behalf the affidavit is to be used, or before any agent of such solicitor, or before the party himself. (E. 536.)

(445.)  
Or their clerks  
or partners.

17. Any affidavit which would be insufficient if sworn before the solicitor himself shall be insufficient if sworn before his clerk or partner. (E. 537.)

(446.)  
Filed too late.

18. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used, unless by leave of the Court or a Judge. On motions founded on affidavits either party may, by leave of the Court or a Judge, make affidavits in answer to the affidavits of the opposite party, as to new matter arising out of such affidavits. (E. 538 & P. A. 92.)

Affidavits in  
reply.

(447.)  
Orders not valid  
unless affidavit  
made before motion.

19. Except by leave of the Court or a Judge no order made *ex parte* in Court, founded on any affidavit, shall be of any force, unless the affidavit on which the application was made was actually made before the order was applied for, and produced or filed at the time of making the motion. (E. 539.)

## 2.—AFFIDAVITS AND EVIDENCE IN CHAMBERS.

(448.)  
Notice of intention  
to use affidavit.

20. The party intending to use any affidavit in support of any application, which would heretofore have been made in the Equity Court, made by him in Chambers, shall give notice to the other parties concerned of his intention in that behalf. (E. 540.)

(449.)  
Affidavits may  
be re-used.

21. All affidavits which have been previously made and read in Court upon any proceeding in a cause or matter may be used before a Judge in Chambers. (E. 541.)

22. Every alteration in an account verified by affidavit shall be marked with the initials of the Commissioner or officer before whom the affidavit is sworn, and such alterations shall not be made by erasure. (E. 542.)

Order XXXVI.  
rr. 22—28.  
(450.)  
Alterations in exhibit.

23. Accounts, extracts, and other documents, referred to by affidavit, shall not be annexed to the affidavit, or referred to in the affidavit as annexed, but shall be referred to as exhibits. (E. 543.)

(451.)  
Exhibits not to be annexed.

24. Every certificate on an exhibit referred to in an affidavit, signed by the Commissioner or officer before whom the affidavit is sworn, shall be marked with the short title of the cause or matter, (E. 544.)

(452.)  
Title of certificate on exhibits.

3.—TRIAL ON AFFIDAVIT.

25. Within fourteen days after a consent for taking evidence by affidavit as between the parties has been given, or within such time as the parties may agree upon, or the Court or a Judge may allow, the plaintiff shall file his affidavits and deliver to the defendant or his solicitor a list thereof. (E. 545.)

(453.)  
Plaintiff to serve list of affidavits.

26. The defendant, within fourteen days after delivery of such list, or within such time as the parties may agree upon, or the Court or a Judge may allow, shall file his affidavits and deliver to the plaintiff or his solicitor a list thereof. (E. 546.)

(454.)  
Defendant to serve list of affidavits.

27. Within seven days after the expiration of the last mentioned fourteen days, or such other time as aforesaid, the plaintiff shall file his affidavits in reply, which affidavits shall be confined to matters strictly in reply, and shall deliver to the defendant or his solicitor a list thereof. (E. 547.)

(455.)  
Affidavits in reply.

28. When the evidence is taken by affidavit, any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party may serve upon the party by whom such affidavit has been filed a notice in writing, requiring the production of the deponent for cross-examination at the trial, such notice to be served at any time before the expiration of fourteen days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the Court or a Judge may specially appoint; and unless such deponent is produced accordingly, his affidavit shall not be used as evidence unless by the special leave of the Court or a Judge. The party producing such deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production. (E. 548.)

(456.)  
Cross-examination of deponents.  
Notice.

Order XXXVI.  
rr. 29—30.

(457.)  
Compelling at  
attendance.

29. The party to whom such notice as is mentioned in the last preceding Rule is given shall be entitled to compel the attendance of the deponent for cross-examination in the same way as he might compel the attendance of a witness to be examined. (E. 549.)

(458.)  
Notice of trial  
after affidavits  
closed, &c.

30. When the evidence under this Order is taken by affidavit, such evidence shall be printed, and the notice of trial shall be given at the same time, after the close of the evidence, as in other cases is by these Rules provided after the close of the pleadings; provided that other affidavits may be printed if all the parties interested consent thereto, or the Court or a Judge so order. (E. 550.)

Order  
XXXVII.  
rr. 1—6.

ORDER XXXVII.

MOTION FOR NEW TRIAL.

(459.)  
Application for  
new trial, where  
made.

1. Every motion for a new trial, or to set aside a verdict, finding, or judgment, shall be made (1) in every cause or matter where there has been a trial thereof, or of any issue therein with a jury, to the Court (*in banc*), and (2) where there has been a trial without a jury, by appeal to the Court (*in banc*). (E. 551.)

(460.)  
Application to be  
by notice of mo-  
tion, not by rule  
*nisi*.

2. Every application for a new trial shall be by notice of motion, and no rule *nisi*, order to show cause, or formal proceeding other than such notice of motion, shall be made or taken. The notice shall state the grounds of the application, and whether all or part only of the verdict or findings is complained of. (E. 553.)

(461.)  
When notice to  
be given.

3. The notice of motion shall be served within ten days after the trial, but the Court or a Judge may, either before or after the expiration of that period, enlarge the time for giving notice. (E. 554.)

(462.)  
Amending no-  
tice.

4. The notice may be amended at any time by leave of the Court or a Judge, on such terms as the Court or Judge may think just. (E. 555.)

(463.)  
Judge who has  
presided at jury  
trial not to hear  
motion.

5. No Judge shall sit on the hearing of any motion for a new trial in any cause or matter tried with a jury before himself. (E. 552.)

(464.)  
New trial only  
for substantial  
wrong.

6. A new trial shall not be granted on the ground of mis-direction, or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the Judge at the trial was not asked to leave to them, unless in the opinion of the Court to which the application is made some substantial wrong or miscarriage has been thereby occasioned in the trial;

and if it appear to such Court that such wrong or miscarriage affects part only of the matter in controversy, or some or one only of the parties, the Court may give final judgment as to part thereof, or some or one only of the parties, and direct a new trial as to the other part only or as to the other party or parties. (E. 556.)

Order  
XXXVII.  
rr. 7, 8.  
New trial as to part.

7. A new trial may be ordered on any question, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question. (E. 557.)

(465.)  
New trial as to part not to affect other findings.

8. When notice of motion for a new trial or appeal has been served, after either of the modes of trial mentioned in Rule 1 of this Order, the further proceedings on the verdict, finding, or judgment may be stayed, in whole, or in part, until the decision on such motion, by the Court or by the Judge who presided at the trial, on such terms as the Court or Judge may think fit. The applicant, however, shall be entitled to an order so staying the proceedings on filing sufficient bail, or security, or making deposit of money, to the approval of the Court or Judge, in such reasonable amount as the Court or Judge shall direct, to respond the judgment to be finally given in the cause or matter. An application to the Judge for such stay of proceedings shall not prejudice the applicant's right to apply to the Court for such stay.

(466.)  
Stay of proceedings.

ORDER XXXVIII.

MOTION FOR JUDGMENT.

Order  
XXX VIII.  
rr. 1-3.

1. Except where by the Act or by these Rules it is provided that judgment may be obtained in any other manner, the judgment of the Court shall be obtained by motion for judgment. (E. 559.)

(467.)  
Judgment by motion.

2. Where at the trial the Judge or Referee abstains from directing any judgment to be entered, the plaintiff may set down a motion for judgment. If he does not set down such a motion and give notice thereof to the other parties within ten days after the trial, any defendant may set down a motion for judgment, and give notice thereof to the other parties. (E. 560.)

(468.)  
Motion where no judgment at trial: either party to move.

3. Where, at or after a trial with a jury, the Judge has directed that any judgment be entered, any party may apply to set aside such judgment and enter any other judgment, on the ground that the judgment directed to be entered is wrong by reason that the finding of the jury upon the questions submitted to them has not been properly entered. (E. 561.)

(469.)  
Motion for judgment when finding wrongly entered.

- Order  
XXXVIII.  
rr. 4-10.  
(470.)  
Motion for judgment where judgment wrongly entered on findings.
4. Where, at or after a trial by a Judge, either with or without a jury, the Judge has directed that any judgment be entered, any party may apply to set aside such judgment and to enter any other judgment, upon the ground that, upon the finding as entered, the judgment so directed is wrong. (E. 562.)
- (471.)  
Application to be to the Court.
5. An application under Rules 3 and 4 of this Order shall be to the Court. (E. 563.)
- (472.)  
Setting aside judgment of referee.
6. Where at a trial by a Referee he has directed that any judgment be entered, any party may move to set aside such judgment and to enter any other judgment, on the ground that upon the finding as entered the judgment so directed is wrong. Such motion shall be made to the Court. (E. 564.)
- (473.)  
Application for judgment after issues found.
7. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, the plaintiff may set down a motion for judgment as soon as such issues or questions have been determined. If he does not set down such a motion, and give notice thereof to the other parties within ten days after his right so to do has arisen, then after the expiration of such ten days any defendant may set down a motion for judgment, and give notice thereof to the other parties. (E. 565.)
- (474.)  
Application for judgment when some of the issues have been found.
8. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that the trial or determination thereof should be postponed, may apply to the Court or a Judge for leave to set down a motion for judgment, without waiting for such trial or determination. And the Court or Judge may, if satisfied of the expediency thereof, give such leave, upon such terms, if any, as shall appear just, and may give any directions which may appear desirable as to postponing the trial of the other issues of fact. (E. 566.)
- (475.)  
Limitation for motion for judgment.
9. No motion for judgment shall, except by leave of the Court or Judge, be set down after the expiration of one year from the time when the party seeking to set down the same first became entitled so to do. (E. 567.)
- (476.)  
Powers of Court on motion.
10. Upon a motion for judgment, or upon an application for a new trial, the Court may draw all inferences of fact, not inconsistent with the finding of the jury, and if satisfied that it has before it all the materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, or may, if it shall be of opinion that it has not

sufficient materials before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made, as it may think fit. (E. 568.)

Order  
XXXVIII.  
rr. 11, 12.

11. Where it is made to appear to the Court or a Judge, on the hearing of any application which may be pending before the Court or Judge, that it will be conducive to the ends of justice to permit it, the Court or Judge may direct any applications to be turned into a motion for judgment, or hearing of the cause or matter; and thereupon the Court or Judge may make such order as to the time and manner of giving the evidence in the cause or matter, and with respect to the further prosecution thereof, as the circumstances of the case may require; and upon the hearing it shall be discretionary with the Court or Judge to either pronounce a judgment or make such order as the Court or Judge deems expedient. (O. 323.)

(477.)  
Pending applica-  
tion turned into  
motion for judg-  
ment or hearing  
of cause.

12. Where, at any time after the writ of summons has been issued it is made to appear to the Court or a Judge on an *ex parte* application that it will be conducive to the ends of justice to permit a notice of motion for a judgment to be forthwith served, the Court or Judge may order the same accordingly; and when such permission is granted, the Court or Judge is to give directions, as to the service of the notice of motion and filing of the affidavits, as may be expedient. Upon the hearing of such motion the Court or Judge, instead of either granting or refusing the application, may give such directions for the examination of either parties or witnesses, or for the making of further inquiries, or with respect to the further prosecution of the suit, as the circumstances of the case may require, and upon such terms as to costs as the Court or Judge thinks right. (O. 324.)

(478.)  
Motion for judg-  
ment by leave  
after service of  
writ.

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ORDER XXXIX.

Order XXXIX.  
r. 1.

ENTRY OF JUDGMENT.

1. Every judgment shall be entered by the Prothonotary in the book to be kept for the purpose. The party entering the judgment shall deliver to the officer a copy of the whole of the pleadings in the cause other than any petition or summons: Provided that no copy need be delivered of any document a copy of which has been delivered on entering any previous judgment in such cause. The Forms in Appendix F. shall be used with such variations as circumstances may require. (E. 569.)

(479.)  
Judgment, how  
entered.



Order XXXIX.  
rr. 2-8.

(480.)  
Date of entry  
where judgment  
pronounced in  
Court.

2. Where any judgment is pronounced by the Court or a Judge in Court, the entry of the judgment shall be dated as of the day on which such judgment is pronounced, unless the Court or Judge shall otherwise order, and the judgment shall take effect from that date: Provided that by special leave of the Court or a Judge a judgment may be ante-dated or post-dated. (E. 571.)

(481.)  
Date in other  
cases.

3. In all cases not within the last preceding Rule the entry of judgment shall be dated as of the day on which the requisite documents are left with the proper officer for the purpose of such entry, and the judgment shall take effect from that date. (E. 572.)

(482.)  
Judges delegat-  
ing authority to  
pronounce judg-  
ment.

4. Any Judge may deliver the judgment of the Court when authorized to do so by the Judges who heard the matter on which judgment is to be pronounced, or may deliver the judgment of any other Judge when authorized so to do by such other Judge, notwithstanding the absence of the Judges or Judge aforesaid. (C. 2 of 1882, sec. 11.)

(483.)  
Judgment for an  
act to be done.

5. Every judgment or order made in any cause or matter requiring any person to do an act thereby ordered shall state the time, or the time after service of the judgment or order, within which the act is to be done, and upon the copy of the judgment or order which shall be served upon the person required to obey the same there shall be indorsed a memorandum in the words or to the effect following, viz. :—

“ If you, the within-named *A. B.*, neglect to obey this judgment (*or* order) by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the same judgment (*or* order).”  
(E. 573.)

(484.)  
Duties of Pro-  
thonotary on en-  
tering judgment.

6. Where, under the Act or these Rules or otherwise, it is provided that any judgment may be entered upon the filing of any affidavit or production of any document, the Prothonotary shall examine the affidavit or document produced, and if the same be regular and contain all that is by law required he shall enter judgment accordingly.  
(E. 574.)

(485.)  
Judgment on  
order, certificate,  
or return to writ.

7. Where, by the Act or these Rules or otherwise, any judgment may be entered pursuant to any order or certificate, or return to any writ, the production of such order, certificate or return shall be a sufficient authority to the officer to enter judgment accordingly. (E. 575.)

(486.)  
Master's certifi-  
cate on refer-  
ence.

8. Where reference is made to a Master to ascertain the amount for which final judgment is to be entered,

the Master's certificate shall be filed when judgment is entered. (E. 576.) Order XXXIX.  
rr. 9—11.

9. In any cause or matter where the defendant has appeared by solicitor, no order for entering judgment shall be made by consent unless the consent of the defendant is given by his solicitor or agent. (E. 577.) (487.)  
Solicitor's consent necessary.

10. Where the defendant has not appeared, or has appeared in person, no such order shall be made unless the defendant attends before a Judge and gives his consent in person, or unless his written consent is attested by a solicitor acting on his behalf, except in cases where the defendant is a barrister or solicitor. (E. 578.) (488.)  
Consent of defendant appearing in person.

11. Satisfaction pieces shall be signed by the plaintiff or his personal representatives, or by a solicitor specially authorized for that purpose, unless a Judge, on special circumstances set forth by affidavit, dispense with such authorization. The satisfaction piece may be in the Form No. 18, Appendix F. (P. A. 281.) (489.)  
Satisfaction pieces.

ORDER XL.

Order XL.  
rr. 1—8.

EXECUTION.

1. Where any person is by any judgment or order directed to pay any money, or to deliver up or transfer any property real or personal to another, it shall not be necessary to make any demand thereof, but the person so directed shall be bound to obey such judgment or order upon being duly served with the same without demand. (E. 579.) (490.)  
Effect of service of judgment or order.

2. Where any person who has obtained any judgment or order upon condition does not perform or comply with such condition, he shall be considered to have waived or abandoned such judgment or order so far as the same is beneficial to himself, and any other person interested in the matter may, on breach or non-performance of the condition, take either such proceedings as the judgment or order may in such case warrant, or such proceedings as might have been taken if no such judgment or order had been made, unless the Court or a Judge shall otherwise direct. (E. 580.) (491.)  
Non-performance of condition on which judgment obtained.

3. A judgment for the recovery by or payment to any person of money may be enforced by any of the modes by which a judgment or decree for the payment of money (492.)  
Enforcing judgment for recovery of money.

- Order XL.  
rr. 4—10. might have been enforced on the nineteenth day of April, A. D. 1884. (E. 581.)
- (493.) Judgment for payment into Court. 4. A judgment for the payment of money into Court may be enforced by writ of sequestration, or in cases in which attachment is authorized by law, by attachment, or by writ of execution. (E. 582.)
- (494.) Judgment for land. 5. A judgment for the recovery or for the delivery of the possession of land may be enforced by writ of possession. (E. 583.)
- (495.) Judgment for other property. 6. A judgment for the recovery of any property other than land or money may be enforced :
- (a.) By writ for delivery of the property ;  
(b.) By writ of attachment ;  
(c.) By writ of sequestration. (E. 584.)
- (496.) Judgment to do or not to do an act. 7. A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by writ of attachment, or by committal. (E. 585.)
- (497.) Meaning of terms, "writ of execution" and "issuing execution against any party." 8. In the Rules of this Order the term "writ of execution" shall include the writ of execution heretofore used, and writs of sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto. And the term "issuing execution against any party" shall mean the issuing of any such process against his person or property as under the preceding Rules of this Order, or under the practice of the Court previous to the nineteenth day of April, A. D. 1884, shall be applicable to the case. (E. 586.)
- (498.) Execution after judgment on contingency. 9. Where a judgment or order is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, apply to the Court or a Judge for leave to issue execution against such party. And the Court or Judge may, if satisfied that the right to relief has arisen according to the terms of the judgment or order, order that execution issue accordingly, or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in an action may be tried. (E. 587.)
- (499.) Judgment against firm, how executed. 10. Where a judgment or order is against a firm, execution may issue :
- (a.) Against any property of the partnership ;  
(b.) Against any person who has appeared in his own name under Order XII, Rule 8, or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner ;

(c.) Against any person who has been served, as a partner, with the writ of summons, and has failed to appear. Order XL.  
rr. 11—15.

If the party who has obtained judgment or an order claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the Court or a Judge for leave so to do; and the Court or Judge may give such leave if the liability be not disputed, or if such liability be disputed, may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined. (E. 588.)

11. No writ of execution shall be issued without the production to the officer by whom the same should be issued of the judgment or order upon which the writ of execution is to issue, or an office copy thereof, showing the date of entry. And the officer shall be satisfied that the proper time has elapsed to entitle the creditor to execution. (E. 589.) (500.)  
Officer to see judgment before issuing execution.

12. No writ of execution shall be issued without the party issuing it, or his solicitor, filing a *præcipe* for that purpose; the *præcipe* shall contain the title of the action, the reference to the record, the date of the judgment, and of the order, if any, directing the execution to be issued, the names of the parties against whom, or of the firm against whose goods, the execution is to be issued; and shall be signed by or on behalf of the solicitor of the party issuing it, or by the party issuing it, if he do so in person. The Forms in Appendix G. shall be used, with such variations as circumstances may require. (E. 590.) (501.)  
Præcipe for execution.

13. Every writ of execution shall be indorsed with the name of the solicitor, or firm of solicitors, actually suing out the same, and when the solicitor actually suing out the writ shall sue out the same as agent for another solicitor, the name of such other solicitor shall also be indorsed upon the writ; and in case no solicitor shall be employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued out by the plaintiff or defendant in person, as the case may be, mentioning the place of such plaintiff's or defendant's residence. (E. 591.) (502.)  
Indorsement of name of solicitor, or party suing in person.

14. Every writ of execution shall bear date of the day on which it is issued. The Forms in Appendix H. shall be used, with such variations as circumstances may require. (E. 592.) (503.)  
Date and form.

15. In every case of execution the party entitled to execution may levy the poundage, fees, and expenses of execution, over and above the sum recovered. (E. 593.) (504.)  
Levy for fees, poundage and expenses.

- Order XL.**  
**rr. 16—20.**
- (505.)  
Indorsement of directions to sheriff.
16. Every writ of execution for the recovery of money shall be indorsed with a direction to the sheriff, or other officer or person to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment or order, stating the amount, and also to levy interest thereon, if sought to be recovered, at the rate of six per cent. per annum from the time when the judgment or order was entered or made, provided that in cases where there is an agreement between the parties that more than six per cent. interest shall be secured by the judgment or order, then the indorsement may be accordingly to levy the amount of interest so agreed, and the indorsement may state how the writ is to be executed. (E. 594, and P. A. 265.)
- (506.)  
Execution, how soon it may issue.
17. Every person to whom any sum of money or any costs shall be payable under a judgment or order shall, so soon as the money or costs shall be payable, be entitled to sue out one or more writ or writs of execution to enforce payment thereof, subject nevertheless as follows :
- Payment postponed.
- (a.) If the judgment or order is for payment within a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period ;
- Stay of execution.
- (b.) The Court or a Judge may, at or after the time of giving judgment or making an order, stay execution until such time as they or he shall think fit. (E. 595.)
- (507.)  
Separate writs for debt and costs.
18. Upon any judgment or order for the recovery or payment of a sum of money and costs, there may be at the election of the party entitled thereto either one writ or separate writs of execution for the recovery of the sum, and for the recovery of the costs, but a second writ shall only be for costs and shall be issued not less than eight days after the first writ. (E. 596.)
- (508.)  
When execution to issue on judgment for other than money or land.
19. A party who has obtained judgment or an order, not being a judgment for payment of money or costs, or for the recovery of land, may issue execution in fourteen days, unless the Court or a Judge shall order execution to issue at an earlier or later date with or without terms. (E. 597.)
- (509.)  
Duration of execution.  
Renewal.
20. A writ of execution if unexecuted shall remain in force for one year only from its issue, unless renewed in the manner hereinafter provided ; but such writ may at any time before its expiration, by leave of the Court or a Judge, be renewed, by the party issuing it, for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, either by being marked with a seal of the Court and having

indicated on it the date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the Sheriff, signed by the party or his solicitor, and bearing the like seal of the Court and date; and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original delivery thereof. (E. 598.)

21. The production of a writ of execution, or of the notice renewing the same, purporting to be sealed and marked as in the last preceding Rule mentioned, showing the same to have been renewed, shall be sufficient evidence of its having been so renewed. (E. 599.)

22. As between the original parties to a judgment or order, execution may issue at any time within six years from the recovery of the judgment or the date of the order. (E. 600.)

23. In the following cases, viz. :—

- (a.) Where six years have elapsed since the judgment or date of the order, or any change has taken place by death or otherwise in the parties entitled or liable to execution;
- (b.) Where a husband is entitled or liable to execution upon a judgment or order for or against a wife;
- (c.) Where a party is entitled to execution upon a judgment of assets *in futuro*;
- (d.) Where a party is entitled to execution against any of the shareholders of a joint stock company upon a judgment recorded against such company, or against a public officer or other person representing such company;

the party alleging himself to be entitled to execution may apply to the Court or a Judge for leave to issue execution accordingly. And such Court or Judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties shall be tried in any of the ways in which any question in an action may be tried. And in either case such Court or Judge may impose such terms as to costs or otherwise as shall be just. (E. 601.)

24. Every order of the Court or a Judge in any cause or matter may be enforced against all persons bound thereby, in the same manner as a judgment to the same effect. (E. 602.)

25. Any person not being a party to a cause or matter, who obtains any order or in whose favor any order is made, shall be entitled to enforce obedience to such order

Order XL.  
rr 21—25.

(510.)  
Evidence of re-  
newal.

(511.)  
Execution with-  
in six years.

(512.)  
In certain cases  
application ne-  
cessary before  
execution.

(513.)  
Enforcing order.

(514.)  
Execution by or  
against a third  
party.

Order XL.  
r.r. 26—32. by the same process as if he were a party to such cause or matter; and any person not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to such cause or matter. (E. 604.)

(515.)  
Other modes of enforcement re-  
main. 26. Nothing in this Order shall take away or curtail any right heretofore existing to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever. (E. 606.)

(516.)  
Order of writs. 27. Nothing in this Order shall affect the order in which writs of execution may be issued. (E. 607.)

(517.)  
Enforcement of  
mandatory judg-  
ment. 28. If a mandamus, granted in an action or otherwise, or a mandatory order, injunction, or judgment for the specific performance of any contract, be not complied with, the Court or a Judge, besides or instead of proceedings against the disobedient party for contempt, may direct that the act required to be done may be done so far as practicable by the party by whom the judgment or order has been obtained, or some other person appointed by the Court or a Judge, at the cost of the disobedient party, and upon the act being done, the expenses incurred may be ascertained in such manner as the Court or a Judge may direct, and execution may issue for the amount so ascertained, and costs. (E. 608.)

(518.)  
Execution  
against corpora-  
tion. 29. Any judgment or order against a corporation wilfully disobeyed may, by leave of the Court or a Judge, be enforced by sequestration against the corporate property, or by attachment against the directors or other officers thereof, or by writ of sequestration against their property. (E. 609.)

(519.)  
Application for  
relief instead of  
*audita querela*. 30. No proceeding by *audita querela* shall be used, but any party against whom judgment has been given may apply to the Court or a Judge for a stay of execution or other relief against such judgment, upon the ground of facts which have arisen too late to be pleaded; and the Court or Judge may give such relief and upon such terms as may be just. (E. 605.)

(520.)  
Equity of re-  
demption in  
goods may be  
seized. 31. Under a writ of execution by which he is instructed to levy goods and chattels, the Sheriff may seize and sell the interest or equity of redemption in any goods of the party against whom the execution was issued, and such sale shall convey whatever interest the mortgagor had in such goods and chattels at the time of the delivery of the writ to the Sheriff. (P. A. 268.)

(521.)  
Goods, &c., when  
bound by writ,  
&c. 32. No writ of execution, or other writ under which personal property is directed to be seized, shall bind the goods, or shall prejudice the title to such goods acquired

by any person *bona fide* and for a valuable consideration, before the actual seizure thereof by virtue of such writ; provided such person had not, at the time when he acquired such title, notice that such writ or any other writ by virtue of which the goods of such owner might be seized or attached had been delivered to and remained unexecuted in the hands of the Sheriff or Coroner; and the Sheriff or Coroner shall, upon the receipt of the writ, indorse thereon the time at which the same was received by him. (P. A. 269.)

Order XL.  
rr. 33—36.

33. Current gold and silver coin may be taken in execution, and may be paid to the creditor as money collected. Provincial debentures and notes, and bank notes, and all bills or evidences of debt issued by any corporation, and circulated as money, may be taken in execution, and paid to the creditor at their par value as money collected, if he will accept them; otherwise they shall be sold as other chattels. (P. A. 270.)

(522.)  
Coin, &c., may  
be taken.

34. The Sheriff shall seize and take in execution any money or bank notes (including any surplus of a former execution against the defendant), cheques, bills of exchange, promissory notes, bonds, mortgages, specialties, or other securities for money belonging to the person against whose effects the writ of execution has issued; and the Sheriff shall hold any such cheques, bills of exchange, promissory notes, bonds, mortgages, specialties, or other securities for money as a security or securities for the amount by the indorsement on the writ directed to be levied, or so much thereof as has not been otherwise levied or raised; and the Sheriff shall pay and assign them to the plaintiff at the sum actually due on and secured by them respectively if he will accept of them; otherwise he may sue in his own name for the sums due thereon and secured thereby, when the time of payment thereon has arrived. (P. A. 271.)

(523.)  
Bank notes, &c.,  
may be taken  
under writ.

35. The transference to the plaintiff of such cheques, bills of exchange, promissory notes, bonds, mortgages, specialties, or other securities for money, or the payment of the same to the Sheriff with or without suit, or the recovery and levying execution against the party so liable on the securities above mentioned, shall discharge him to the extent of such payment, or of such recovery, and levy in execution (as the case may be), from his liability on any such cheque, bill of exchange, promissory note, bond, mortgage, specialty, or other security. (P. A. 272.)

(524.)  
Effect of transfer  
of securities, &c.

36. The Sheriff shall pay over to the plaintiff or his attorney the money so recovered, or a sufficient sum to discharge the amount by the writ directed to be levied, less his poundage and expenses. (P. A. 273.)

(525.)  
Sheriff to pay  
over money re-  
covered.



- Order XL.**  
**rr. 37—44.**  
(526.)  
Surplus to be paid to defendant.
37. If, after satisfaction of the amount, together with Sheriff's poundage and expenses, any surplus remains in the hands of the Sheriff, the same shall be paid to the party against whom the execution issued. (P. A. 274.)
- (527.)  
Bond of indemnity to Sheriff.
38. No Sheriff shall be bound to sue any party liable upon any such cheque, bill of exchange, promissory note, bond, mortgage, specialty, or other security, unless the party who sued out the execution enters into a bond with two sureties to indemnify such Sheriff from all costs and expenses to be incurred in the prosecution of the action, or to which he may become liable in consequence thereof; and the expense of such bond may be deducted out of any money recovered in such action. (P. A. 275.)
- (528.)  
Sheriff to make return with writ.
39. The Sheriff shall, in returning every execution, state specially his doings thereunder, and where property has been taken, give a specific account thereof, and of the sales of the same, with an account of his fees and charges against the same. (P. A. 276.)
- (529.)  
Articles exempted from levy.
40. The necessary wearing apparel and bedding of the debtor and his family, and the tools or instruments of his trade or calling, one stove, and his last cow, shall be exempted from execution. (P. A. 277.)
- (530.)  
Writ when to bind goods.
41. No writ of execution shall bind the goods of the defendant but from the time the writ shall be delivered to the sheriff to be executed; and the sheriff shall, upon the receipt of the writ, indorse thereon the time at which the same was received by him. (P. A. 278.)
- (531.)  
Discharge of defendant from custody.
42. A written order signed by the solicitor by whom any writ of execution shall have been issued, or by the party at whose instance such execution issued, shall justify the officer in discharging any person held in custody under such execution. The order of the solicitor shall not suffice for that purpose where the party for whom such solicitor professes to act has given to the officer written notice to the contrary, and shall not in any case be a satisfaction of the debt unless made by the authority of the creditor. (P. A. 280.)
- (532.)  
One of several defendants may be arrested.
43. Where the writ of execution is against several, and it is not intended that all of them shall be arrested, the Sheriff may be directed to arrest any one or more of the persons against whom the execution has been issued. (P. A. 346.)

2.—*Discovery in aid of Execution.*

- (533.)  
Examination of judgment debtor.
44. When a judgment or order is for the recovery or payment of money, the party entitled to enforce it may apply to the Court or a Judge for an order that the debtor liable under such judgment or order, or in the case of a

corporation that any officer thereof, be orally examined, as to whether any and what debts are owing to the debtor, and whether the debtor has any and what other property or means of satisfying the judgment or order, before a Judge or an officer of the Court as the Court or Judge shall appoint; and the Court or Judge may make an order for the attendance and examination of such debtor, or of any other person, and for the production of any books or documents. (E. 610.)

Order XL.  
rr. 45—47.

45. Any person liable to be examined under any of the Rules of this Order may be compelled to attend and testify, and to produce books and documents, in the same manner, and subject to the same rules of examination, and the same consequences of neglecting to attend, or refusing to disclose the matters in respect of which he may be examined, as in the case of a witness on a trial. (O. 368.)

(534.)  
Compelling at-  
tendance and  
production.

46. In case of any judgment or order other than for the recovery or payment of money, if any difficulty shall arise in or about the execution or enforcement thereof, any party interested may apply to the Court or a Judge, and the Court or Judge may make such order thereon for the attendance and examination of any party or otherwise as may be just. (E. 611.)

(535-)  
Judgments other  
than for money.

47. The costs of any application under the last two preceding Rules or either of them, and of any proceedings arising from or incidental thereto; shall be in the discretion of the Court or a Judge, or in the discretion of such officer as in Rule 44 mentioned, if the Court or a Judge shall so direct. (E. 612.)

(536.)  
Costs.

ORDER XLI.

WRITS OF EXECUTION AND SEQUESTRATION.

Order XLI.  
rr. 1, 2.

1. Writs of execution, of the Forms in use immediately preceding the first day of October, A.D., 1884, and of the Forms in Appendix H., shall have the same force and effect as the like writs have heretofore had, and shall be executed in the same manner in which the like writs have heretofore been executed. (E. 613.)

(537.)  
Form and effect.

2. Where any person is by any judgment or order directed to pay money into Court or to do any other act in a limited time, and after due service of said judgment or order refuses or neglects to obey the same according to the exigency thereof, the person prosecuting such judgment or order shall, at the expiration of the time limited for the performance thereof, be entitled, without obtaining any order for that purpose, to issue a writ of sequestration

(538.)  
Writ of seques-  
tration.

**Order XLI.** against the estate and effects of such disobedient person.  
**rr. 3-4.** Such writ of sequestration shall have the like effect, as  
 Effect. nearly as may be, as a writ of sequestration in Chancery had in England before the commencement of the Principal Judicature Act, and the proceeds of such sequestration may be dealt with in the same manner as the proceeds of writs of sequestration were before the same date dealt with by the Court of Chancery, as nearly as may be. (E. 618.)

(539.)  
 No *subpœna* for costs. 3. No *subpœna* for the payment of costs, and, unless by leave of the Court or a Judge, no sequestration to enforce such payment, shall be issued. (E. 619.)

(540.)  
 No *venditioni exponas* necessary. 4. Where, by virtue of any writ of execution, goods or other property have been seized but not sold, no writ of *venditioni exponas* need be issued, but the officer may proceed to sell such goods or other property, although the writ of execution may have expired.

**Order XLII.**  
**rr. 1, 2.**

ORDER XLII.

ATTACHMENT.

(541.)  
 Effect of attachment. 1. A writ of attachment against the person shall have the same effect as a writ of attachment issued out of the Supreme Court has heretofore had. (E. 620.)

(542.)  
 Leave to be obtained. 2. No such writ of attachment shall be issued without the leave of the Court or a Judge, to be applied for on notice to the party against whom the attachment is to be issued. (E. 621.)

**Order XLIII.**  
**r. 1.**

ORDER XLIII.

ATTACHMENT OF DEBTS.

(543.)  
 Order for attachment of debts. 1. The Court or Judge may, upon the *ex parte* application of any person who has obtained a judgment or order for the recovery or payment of money, either before or after any oral examination of the debtor liable under such judgment or order, and upon affidavit by himself or his solicitor stating that judgment has been recovered, or the order made, and that it is still unsatisfied, and to what amount, and that any other person in indebted to such debtor, and is within the jurisdiction, order that all debts owing or accruing from such third person (hereinafter called the garnishee) to such debtor, shall be attached to answer the judgment or order; and by the same, or any

subsequent order it may be ordered that the garnishee shall appear before the Court or a Judge or an officer of the Court, as such Court or Judge shall appoint, to show cause why he should not pay to the person who has obtained such judgment or order the debt due from him to such debtor, or so much thereof as may be sufficient to satisfy the judgment or order. (E. 622.)

Order XLIII.  
rr. 2-6.

2. Service of an order that debts, due or accruing to a debtor liable under a judgment or order, shall be attached, or notice thereof to the garnishee, in such manner as the Court or Judge shall direct, shall bind such debts in his hands. (E. 623.)

(544.)  
Effect of garnishee order.

3. If the garnishee does not forthwith pay into Court the amount due from him to the debtor liable under a judgment or order, or an amount equal to the judgment or order, and does not dispute the debt due or claimed to be due from him to such debtor, or if he does not appear upon summons, then the Court or a Judge may order execution to issue, and it may issue accordingly, without any previous writ or process, to levy the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the judgment or order. (E. 624.)

(545.)  
Order for execution against garnishee.

4. If the garnishee disputes his liability, the Court or Judge, instead of making an order that execution shall issue, may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in an action may be tried or determined. (E. 625.)

(546.)  
Ascertaining disputed liability of garnishee.

5. Whenever in proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the Court or a Judge may order such third person to appear, and state the nature and particulars of his claim upon such debt. (E. 626.)

(547.)  
Order for third person to appear.

6. After hearing the allegations of any third person under such order, as in Rule 5 mentioned, and of any other person whom by the same or any subsequent order the Court or a Judge may order to appear, or in case of such third person not appearing when ordered, the Court or Judge may order execution to issue to levy the amount due from such garnishee, or any issue or question to be tried or determined according to the preceding Rules of this Order, and may bar the claim of such third person, or make such other order as such Court or Judge shall think fit, upon such terms, in all cases, with respect to the lien or

(548.)  
Decision as to third persons.

**Order XLIII.** charge (if any) of such third person, and to costs, as the Court or Judge shall think just and reasonable. (E. 627.)  
r. 7-9.

(549.)  
 Effect of pay-  
 ment by garni-  
 shée. 7. Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid shall be a valid discharge to him as against the debtor, liable under a judgment or order, to the amount paid or levied, although such proceeding may be set aside, or the judgment or order reversed. (E. 628.)

(550.)  
 Record of at-  
 tachments. 8. There shall be kept by the Prothonotary a Debt Attachment Book, and in such book entries shall be made of the attachment and proceedings thereon, with names, dates, and statements of the amount recovered, and otherwise; and copies of any entries made therein may be taken by any person upon application. (E. 629.)

(551.)  
 Costs. 9. The costs of any application for an attachment of debts, and of any proceedings arising from or incidental to such application, shall be in the discretion of the Court or a Judge. (E. 630.)

**Order XLIV.**  
r. 1.

#### ORDER XLIV.

ARREST OF DEFENDANT BEFORE FINAL JUDGMENT. (CAPIAS.)

(552.)  
 Arrest of defend-  
 ant about to  
 leave the Pro-  
 vince.

1. Where the plaintiff, in any action in which the defendant is now liable to arrest, by affidavit of himself, or some other person, proves to the satisfaction of a Judge of the Supreme Court, or of a Judge of a County Court, or of a Commissioner, that the plaintiff has a good cause of action against the defendant, to the amount of eighty dollars or more, and that the deponent has probable cause for believing, and does believe, that the defendant is about to leave the Province unless he be arrested, and that he believes that the debt will be lost unless the defendant be forthwith arrested, such Judge or Commissioner may, without requiring in such affidavit any statement of the ground for such belief, make an order directing that such defendant be arrested and imprisoned for a period not exceeding six months, unless and until he has sooner given the security prescribed in the following Rules of this Order, which security shall be to such amount as the Judge or Commissioner shall think fit (not exceeding the sum sworn to). The security shall be to the effect that any sum recovered against the defendant so arrested, in the action, shall be paid, or that the defendant shall be rendered to prison. (See Imp. Act 32 and 33 V., c. 62, and P. A. 31 et seq., and Eng. R. M. T., 1869.)

2. Orders to arrest may be in Form No. 28 in Appendix K., or to the like effect. They shall be sealed by the Prothonotary and shall then be deemed to be issued.

Ord<sup>r</sup> XLIV.  
r. r. 2-9.  
(553.)  
Form of order.

3. The defendant shall be at liberty, at any time after the arrest, to apply to rescind or vary the order, or to be discharged from custody, or for such other relief as may be just. Such application may be made to the Commissioner or County Court Judge who made the order, or to any Judge of the Supreme Court or to the Court, and may be made to the Court or to a Judge notwithstanding a previous application to the Commissioner or County Court Judge, and notwithstanding such Commissioner or County Court Judge has either partially given or refused relief in the premises. If the creditor be dissatisfied with any order made by a Commissioner or County Court Judge on such application, he may apply to the Court or a Judge to rescind or vary the same. The costs of every proceeding shall be in the discretion of the Commissioner or Judge, and of the Court or Judge.

(554.)  
Application by defendant for relief.

4. Concurrent orders may be issued for arrest in different counties.

(555.)  
Concurrent orders.

5. The security to be given by the defendant may be a deposit in Court of the amount mentioned in the order, with forty dollars for costs, or a bond to the Sheriff or Coroner, as the case may be, by the defendant and two sufficient sureties (or with leave of a Judge, more than two), or, with the plaintiff's consent, any other form of security. The bond may be in the Form in Appendix K., with such variation as circumstances may require. The sureties shall be deemed bail to the action and may render the defendant at any time.

(556.)  
The security to be given by defendant.

6. The money deposited, and the security, and all proceedings thereon, shall be subject to the order and control of the Court or a Judge.

(557.)  
Security subject to order of Court, &c.

7. Unless otherwise ordered the costs of and consequent on an order to arrest shall be costs in the cause.

(558.)  
Costs of arrest.

8. The Sheriff shall, within one month after the date of such order to arrest, but not afterwards, proceed to arrest such defendant thereon, and shall keep him in custody until he shall have given the security mentioned in Rule 5 of this Order. The Sheriff shall make return of the order to the Prothonotary of the county where the order was sealed, with a statement of his doings thereon, immediately on the execution thereof, or at the expiration of the month if not executed. (P. A. 32.)

(559.)  
Sheriff's duty.

9. When the defendant shall be described in the order or affidavit by initials, or by a wrong name, or without a Christian name, he shall not therefor be discharged out of

(560.)  
Misnomer.

Order XLIV.  
rr. 10-15.

custody, or the bond be ordered to be cancelled, if it shall appear by the affidavit on which the order was granted, that due diligence has been used to obtain a knowledge of the proper name. (P. A. 33.)

(561.)  
Defendant dis-  
charged if plain-  
tiff does not pro-  
ceed to trial.

10. Where a defendant is in custody on an order to arrest, and the plaintiff does not proceed to trial at the next term or sittings after his arrest, the defendant shall be discharged, unless the Court or a Judge be of opinion that he ought not to be discharged, on cause shewn by affidavit; provided the defendant was ready for trial at such term or sittings, and had appeared and delivered his statement of defence, and had given notice of his readiness for trial when the cause was called for trial; and provided the cause had been called for trial. (P. A. 34.)

(562.)  
Relief under In-  
digent Debtor's  
Act.

11. A defendant arrested under order to arrest shall be entitled to the same relief as a defendant arrested under execution or other process is entitled under the provisions of the Chapter of the Revised Statutes, "Of the Relief of Indigent Debtors confined in Jail."

(563.)  
Bail to sheriff,  
when to justify.

12. The bail to the sheriff may be called upon to justify on the return of the order; and the sheriff shall be liable for taking insufficient bail; but he may relieve himself at any time before judgment by causing the defendant to be rendered, and by payment of all costs which may have been incurred by the plaintiff in consequence of such bail being insufficient. (P. A. 196.)

(564.)  
Bail bound to be  
returned with  
order.

13. The Sheriff shall return the bail bond with the order to the place where the order was sealed, with an assignment thereon to the plaintiff, which assignment may be made by the Sheriff indorsing his name thereon; and the same shall be sufficient to enable the plaintiff to bring action thereon in his own name against the several parties who have executed the same. (P. A. 197.)

(565.)  
Bail, when allow-  
ed to render in  
action upon bail  
bond.

14. In any case where the writ of execution against the defendant in any action is returned *non est inventus*, and an action is prosecuted against his bail upon their bond, they shall be allowed to render their principal in discharge thereof at any time before the time for pleading has elapsed, if they pay to the plaintiff the costs which have been incurred in the action against them upon their bond. (P. A. 198.)

(566.)  
Bail living at  
distance may  
justify before  
Judge, &c.

15. When the bail live more than twenty miles from the place where the action is brought, or where the bail live within that distance, but the Court shall not be in session, they may justify before a Judge or a Commissioner, by affidavit; and the Judge or Commissioner may examine the sureties upon oath touching the value of their respective estates. (P. A. 199.)

## ORDER XLV.

Order XLV.  
rr. 1-5.

## REPLEVIN.

1. No Writ of Replevin shall hereafter be issued, but in any action, commenced as prescribed by Rule I. of Order II., brought for the recovery of any personal property, and claiming, whether alone, or with any other claim, that such property was unlawfully taken, or is unlawfully detained, the plaintiff may, at any time after the issue of the writ of summons, obtain from the Prothonotary an order for the delivery of the property to him, on his complying with the Rules hereinafter contained in this Order. Such order for delivery shall be in the Form No. 49 in Appendix K., with such variations as circumstances may require, and, where signed and sealed by the Prothonotary, shall be deemed to be issued, and shall thereafter have the like force and effect as the writ of replevin has heretofore had.

(567.)  
Order for delivery instead of writ of replevin.

2. No order to replevy, except where the property sought to be replevied has been distrained for rent or damage feasant, shall issue, unless the party applying therefor, or his agent, shall make and file an affidavit, therein stating:—

(568.)  
Affidavit to be filed before issue of order.

1st. That the person or corporation claiming the property is the owner thereof, or that he is lawfully entitled to the possession thereof, and that it is unjustly detained from him, describing the property in the affidavit.

2nd. The value thereof to the best of his belief.

Such description of the property, and the value thereof shall be stated in the order. The affidavit may be in the form in Appendix K., No. 50, or to the like effect. (P. A. 331.)

3. A copy of such order shall be served on the defendant personally, or, if he cannot be found, left at his usual or last place of abode, with his wife or some other grown person, being a member of his family or household. (P. A. 332.)

(569.)  
Service of order

4. The Sheriff shall proceed under such order as he did heretofore under a writ of replevin, but shall not serve a copy thereof until he has replevied the property, or some part of the property therein mentioned, if he cannot replevy the whole, in consequence of the defendant having removed the same out of the county, or because the same is not in the possession of the defendant, or of any person for him. (P. A. 333.)

(570.)  
Sheriff's duty on receipt of order.

5. Before the Sheriff replevies he shall take a bond in double the value of the property to be replevied, as stated in the order. The bond shall be assignable to the

(571.)  
Bond to Sheriff.



Order XLV. defendant by the Sheriff indorsing his name thereon, and  
rr. 6-8. such indorsement shall enable the plaintiff to bring action thereon in his own name against the parties who have executed it. The bond may be in the Form No. 51 in Appendix K., with such variations as circumstances may require. (P. A. 333.)

(572.)  
 Where property is concealed building may be broken open by sheriff after demand.

6. In case the property to be replevied, or any part thereof, be secured or concealed in any dwelling-house or other building or enclosure of the defendant, or of any other person holding the same for him, and the Sheriff publicly demands from the owner and occupant of the premises deliverance of the property to be replevied, and in case the same be not delivered to him within twenty-four hours after such demand, he may, and if necessary shall, break open such house, holding or enclosure, for the purpose of replevying such property, or any part thereof, and shall replevy according to the order. (P. A. 334.)

(573.)  
 Sheriff may search defendant's person and premises where property is concealed.

7. If the property to be replevied, or any part thereof, be concealed either about the person or on the premises of the defendant, or of any other person holding the same for him, and the Sheriff demands from the defendant or such other person aforesaid delivery thereof, and delivery be neglected or refused, he may, and if necessary shall, search and examine the person and premises of the defendant, or of such other person, for the purpose of replevying such property, or any part thereof, and shall make replevin according to the order. (P. A. 335)

(574.)  
 Return, what to contain.

8. The Sheriff shall return the order to the Prothonotary of the county in which the same was issued, with a statement of his doings thereon, and shall annex to the return of the order :—

1st. The names of the sureties in, and the date of, the bond taken from the plaintiff, and the names of the witnesses thereto.

2nd. The names of the sureties in, and the date of, the bond taken from the defendant on his retention of the property, and the names of the witnesses thereto.

3rd. The places of residence and additions of the sureties.

4th. The number, quantity and quality of the articles of property replevied ; and, in case he has replevied only a portion of the property mentioned in the order, and cannot replevy the residue by reason of the same having been carried out of his county by the defendant, or not being in the possession of the defendant, or of any other person for him, he shall state in his return the articles which he cannot replevy, and the reason why not. (P. A. 336.)

9. Notwithstanding the issue of an order to replevy, the defendant, or his agent, except in cases of distress for rent or damage feasant, shall have the right to retain possession of the property contained therein, if he shall give security to the Sheriff in the Form number 52 in Appendix K., with such variations as circumstances may require. Such security, given either by the plaintiff or defendant, shall be assigned, on request, to the party entitled to the benefit thereof, by the Sheriff indorsing his name thereon, and such indorsement shall be sufficient to enable such party to bring action thereon in his own name against the several parties who have executed such security. (P. A. 343.)

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r. 9.

(575.)  
Defendant may retain possession on giving security.

ORDER XLVI.

Order XLVI.  
r. 1-4.

SUITS AGAINST ABSENT OR ABSCONDING DEBTORS.

1.—Generally.

1. In suits against persons absconding or absent out of the Province, the writ of summons shall be in the usual form, but may describe the defendant as absconding or absent out of the Province. A copy of the writ of summons shall be left at the last place of defendant's abode.

(576.)  
Writ to state defendant is absent, &c.

2. At or after the commencement of the action the plaintiff may sue out attachment to take property, on making an affidavit, by himself or his agent, showing a cause of action for eighty dollars or upwards, stating the amount of debt due or damage sustained, and stating that the defendant is absent or absconding from the Province. The sum so sworn to shall be indorsed on the writ of attachment.

(577.)  
Attachment, how issued.

3. The Sheriff to whom a writ of attachment is directed, shall levy for the amount indorsed on the writ, with one hundred and twenty dollars for probable costs. (C. 97, R. S., 4th series, sec. 4.)

(578.)  
Amount of levy.

4. Where goods are exhibited to the Sheriff as the property of the absent or absconding debtor, they shall be valued by two appraisers who may be sworn before the Sheriff or deputy Sheriff or any other person competent to administer an oath, and upon an appraisal being made under their hands, the Sheriff shall retain such part of the goods as shall be sufficient to respond the sum sworn to, and probable costs as above. The defendant's property shall not be bound by the attachment until a levy is made. (C. 97, R. S., 4th series, sec. 5.)

(579.)  
Goods exhibited to be appraised before levy.

Attachment binds from levy.

Order XLVI  
rr. 5-12.

(580.)  
Perishable goods may be sold by order of Court unless security is given.

5. Where the goods consist of stock, or are shown upon affidavit to be of a perishable nature, and the agent, if any, shall not, within three days after notice of the appraisement, give security for the value, a judge may at his discretion cause the same to be sold at public auction, and the proceeds thereof shall be retained by the Sheriff, or paid into Court to respond the judgment. (C. 97, R. S., 4th series, sec. 6.)

2.—*Subsequent Attachers.*

(581.)  
Party interested may contest attachment.

6. When any person shall have any title or interest in any real estate, goods or credits attached, as a subsequent attacher or otherwise, he may be allowed to dispute the validity and effect of the attachment, on the ground that the sum demanded was not justly due, or that it was not payable when the action commenced. (C. 97, R. S., 4th series, sec. 7.)

(582.)  
Shall apply to Court on affidavit.

7. The party objecting to the attachment may apply to the Court or a Judge to set it aside. The application shall be grounded on an affidavit, setting out the facts and circumstances on which the motion is made, and also showing that the applicant's claim is just and legal. (C. 97, sec. 8.)

(583.)  
Court may direct trial and make further orders.

8. Upon hearing the motion, the Court or Judge may direct a trial of any question of fact arising on the inquiry; and if it shall appear that the sum demanded in the prior suit, or any part of it, is not justly due, or was not payable when the action was commenced, the Court or Judge shall order the attachment therein made to be set aside in whole or in part, as justice shall require, but the order shall have no other effect in the prior suit. (C. 97, sec. 9.)

(584.)  
Proceedings in prior suit to have no effect.

9. The proceedings between the two adverse claimants shall not be affected by any defence or other act of the defendant in the prior suit, nor by any judgment that shall be rendered therein. (C. 97, sec. 10.)

(585.)  
Court may order security for costs, &c.

10. The Court or Judge may, upon every such inquiry, direct such security to be given for costs, and, upon any decision thereon, may award such costs to either party as may be just and reasonable. (C. 97, sec. 11.)

(586.)  
Assessment.

11. If the defendant does not appear within six months from the attachment of property or service of an agent, unless a later appearance and defence be allowed by the Court or a Judge, the debt or damage may be assessed before a Judge. The Judge may order a trial in any mode that he may think fit. (C. 97, sec. 13.)

(587.)  
New trial or postponement.

12. The Court or a Judge may order a new trial, or may postpone judgment for a further time to allow the

defendant a further opportunity to defend, and may direct all proper notices to be given. (C. 97, sec. 14.)

Order XLVI.  
rr. 13—18.

### 3.—Execution.

13. After judgment obtained against an absent or absconding debtor, the Court or a Judge may grant execution against any agent or trustee who has been summoned and proved to have goods or credits in his hands, for such amount and on such terms as the Court or Judge approves, allowing the agent his reasonable costs and other just allowances. Notice of the application for leave to issue execution shall be given to the agent. (C. 97, sec. 15.)

(588.)  
Execution  
against agent.

14. No execution shall issue against any person sued as an absent or absconding debtor, and who has not been served with the writ of summons, or appeared, until the plaintiff shall have given security to the satisfaction of the Court or a Judge for the repayment of all moneys levied thereunder, in case of the judgment being reversed. (C. 97, sec. 16.)

(589.)  
Security before  
execution.

### 4.—The Agent or Trustee.

15. If at any time after the commencement of the action the plaintiff or his agent makes an affidavit of belief that any person is the agent or trustee of the defendant, or has goods or credits of such defendant in his possession or under his control, a summons shall issue to bring in such agent or trustee. (C. 97, sec. 18.)

(590.)  
Summons for  
agent.

16. The service of such summons on the agent shall bind all the goods and credits of the defendant, then in his possession, or under his control, including choses in action, to the amount indorsed on the writ, with one hundred and twenty dollars for probable costs. (C. 97, sec. 19.)

(591.)  
Effect of sum-  
mons for agent.

17. When an agent or trustee is summoned, he shall appear and file his declaration with the Prothonotary of the county where he resides, and serve the plaintiff or his attorney with a copy thereof within fifteen days after service; but he shall not be required to appear for personal examination, except on notice to that effect, and in the county where he resides, either before the Judge or the Court in term or sittings. (C. 97, sec. 20.)

(592.)  
Appearance and  
declaration of  
agent.

Proviso.

18. Where a person summoned as agent or trustee shall file a declaration under his hand that he had not, at the time the summons was served upon him, any goods, effects or credits of the absent or absconding debtor in his possession or under his control, and shall, if required, submit to an

(593.)  
Agent or trustee  
entitled to costs  
and fees in cer-  
tain cases.

Order XLVI. examination upon oath satisfactory to the Court or a Judge, such agent or trustee shall be discharged and be entitled to his reasonable costs to be taxed and allowed, besides his fees and attendance as in case of a witness, and shall be entitled to sue out execution against the plaintiff for the amount of such costs, fees and attendance. (C. 97, sec. 21.)  
rr. 19-23.

(594.)  
 Proceedings  
 against agent  
 not appearing.

19. If any person summoned as an agent or trustee shall fail to appear, and disclose upon oath if required the amount of the goods or credits of the principal in his possession or under his control, at the service of process, or to acknowledge that he has sufficient in his hands to respond the judgment, the Court or a Judge may deal with him as for a contempt; and he shall also be liable to pay the plaintiff his costs if the Court or Judge shall so order. (C. 97, sec. 22.)

#### 5.—*Special Bail.*

(595.)  
 Attachment  
 removed by  
 special bail.

20. When the absent or absconding debtor, his agent or trustee, shall desire to relieve the property from the attachment, he shall give such security to respond the judgment, and submit to such terms as the Court or a Judge shall deem right. (C. 97, sec. 23.)

#### 6.—*Trial and Re-hearing.*

(596.)  
 No trial before  
 attachment, or  
 proof of agent  
 having credits.

21. The plaintiff shall not proceed to the trial of his cause against any absent or absconding debtor, unless the defendant's real estate or goods have been attached, or until the agent or trustee shall have admitted or been proved to have goods or credits of such absent or absconding debtor in his possession or under his control. (C. 97, sec. 24.)

(597.)  
 Defendant re-  
 heard within  
 three years.

22. Where judgment has been obtained against an absent or absconding debtor, the defendant shall be entitled to a re-hearing at any time within three years. (C. 97, sec. 25.)

#### 7.—*Forms.*

(598.)  
 Form of writs.

23. The Forms of writs of attachment and of summons for agent in Appendix H. shall be used, with such variations as circumstances may require.

ORDER XLVII.

Order XLVII.  
Pr. 1-5.

SUITS AGAINST FOREIGN COMPANIES.

1. Companies or bodies corporate, associated or incorporated out of Nova Scotia, doing business by an agent within this Province, may be sued for any cause of action arising in whole or in part therein, by the name whereby they are associated or incorporated, or by the name whereby they may be designated by the agent; and service on the agent of the writ of summons by which the action is commenced, shall give the Court jurisdiction over the case; and proceedings shall be had as when the writ has been served on a defendant personally; and any person so served may, at any time before judgment, appear and show that he is not an agent, and upon proof thereof he shall have judgment against the plaintiff for his costs, unless the Court or a Judge shall otherwise order. (C. 97, R. S., 4th series, sec. 26.)

(599.)  
 Foreign companies doing business by agents,—how sued.

2. The Court or a Judge may, on sufficient cause shown, allow time for the agent to communicate with his constituents. (C. 97, sec. 27.)

(600.)  
 Time allowed to communicate with principal.

3. If judgment shall pass for the plaintiff, the agent, whether the same agent who was served with process, or any other, shall be bound to respond the same out of the assets of the company or body corporate, which then are, or at any time afterwards may come into his hands or under his control; deducting his costs, and fair and legal commission thereon, to be disclosed by the agent on oath, if thereto required. (C. 97, sec. 28.)

(601.)  
 Goods in hands of agent liable for amount of judgment.

4. After judgment, the agent may be examined on oath before the Court or a Judge, concerning the assets of the company, or corporate body, in his hands or under his control at the time of judgment, or at any time afterwards; and the plaintiff and his proof may be heard in explanation or contradiction; and such order shall be therein made as to justice may appertain, and shall be enforced against the agent personally, if necessary. (C. 97, sec. 29.)

(602.)  
 Examination of agent after judgment.

5. If the plaintiff shall desire security previous to judgment, he may at the commencement of the suit, or during its progress, make oath to the cause of action, and proceed by attachment against the estate and effects of the company, or corporate body, and by summons to disclose against the agents and debtors of the company or corporate body, or by either process, and by one or in separate and several writs; and the estate and effects attached, and also the credits and effects in the hands or under the control of

(603.)  
 How plaintiff may obtain security before judgment.

**Order XLVII.** the agents or debtors at the time of service, or at any time afterwards, shall be available to respond the judgment to the amount of the sum sworn to and costs, as in cases under Order XLVI.; but the plaintiff may nevertheless proceed against the agent after judgment, as before directed. (C. 97, sec. 30.)

(604.)  
Proceedings where no agent. 6. When such company shall have ceased to do business within the Province, or shall have no agent within the Province, or such cannot be discovered, and shall have property, real or personal, within the Province, the proceedings may be taken against the Company, as provided for the case of absent or absconding debtors, in Order XLVI. (C. 97, sec. 31.)

(605.)  
Other provisions not abrogated. 7. Nothing in this Order contained shall prevent the judgment from binding the property of a company or body corporate, or from being enforced by execution, or otherwise, in such manner as may be conformable to law or to these Rules in other cases. (C. 97, sec. 32.)

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### ORDER XLVIII.

**Order XLVIII.**  
**rr. 1-4.**

#### WRIT OF POSSESSION (LANDS).

(606.)  
Writ to recover possession of land. 1. A judgment or order that a party do recover possession of any land may be enforced by writ of possession in manner before the first day of October, A. D. 1884 used in actions of ejectment in the Supreme Court. (E. 644.)

(607.)  
Writ may issue after affidavit. 2. Where by any judgment or order any person therein named is directed to deliver up possession of any lands to some other person, the person prosecuting such judgment or order shall, without any order for that purpose, be entitled to sue out a writ of possession on filing an affidavit showing due service of such judgment or order, and that the same has not been obeyed. (E. 645.)

(608.)  
Writ for costs and possession. 3. Upon any judgment or order for the recovery of any land and costs, there may be either one writ or separate writs of execution for the recovery of possession and for the costs, at the election of the successful party. (E. 646.)

(609.)  
Effect of writ. 4. A writ of possession shall have the effect of a writ of assistance as well as of a writ of *habere facias possessionem*. (O. 381.)

ORDER XLIX.

Order XLIX.

rr. 1, 2.

WRIT OF DELIVERY (CHATTELS).

1. Where it is sought to enforce a judgment or order for the recovery of any property other than land or money by writ of delivery, the Court or a Judge may, upon the application of the plaintiff, order that execution shall issue for the delivery of the property, without giving the defendant the option of retaining the property, upon paying the value assessed, if any, and that if the property cannot be found, and unless the Court or a Judge shall otherwise order, the Sheriff shall distrain the defendant by all his lands and chattels in the Sheriff's bailiwick, till the defendant deliver the property; or at the option of the plaintiff, that the Sheriff cause to be made of the defendant's goods the assessed value, if any, of the property. (E. 647.)

(610.)  
How issued and enforced.

2. A writ of delivery shall be in one of the Forms in Appendix H.; and when a writ of delivery is issued, the plaintiff shall, either by the same or a separate writ of execution, be entitled to have made of the defendant's goods the damages and costs awarded, and interest. (E. 648.)

(611.)  
Forms of writ.

ORDER L.

Order L.

rr. 1, 2.

1. INTERLOCUTORY ORDERS AS TO MANDAMUS, INJUNCTIONS, OR INTERIM PRESERVATION OF PROPERTY.

1. When by any contract a *prima facie* case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the Court or a Judge may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into Court or otherwise secured. (E. 657.)

(612.)  
Order for interim preservation.

2. It shall be lawful for the Court or a Judge, on the application of any party, to make any order for the sale by any person or persons named in such order, and in such manner, and on such terms as the Court or Judge may think desirable, of any goods, wares, or merchandize which may be of a perishable nature or likely to injure from keeping, or which for any other just and sufficient reason it may be desirable to have sold at once. (E. 658.)

(613.)  
Sale of perishable goods.



- Order L.**  
**R. 3-8.**
- (614.)  
Order for preservation or inspection.
- Entry on lands.
- Samples.
- Experiment.
- (615.)  
Inspection by Judge.
- (616.)  
Inspection by jury.
- (617.)  
Application for mandamus, injunction, &c.
- (618.)  
Application for order for preservation of property.
- (619.)  
Amount of lien claimed may be paid into Court.
3. It shall be lawful for the Court or a Judge, upon the application of any party to a cause or matter, and upon such terms as may be just, to make any order for the detention, preservation, or inspection of any property or thing, being the subject of such cause or matter, or as to which any question may arise therein, and for all or any of the purposes aforesaid to authorize any person to enter upon or into any land or building in the possession of any party to such cause or matter, and for all or any of the purposes aforesaid to authorize any samples to be taken, or any observation to be made or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence. (E. 659.)
4. It shall be lawful for any Judge, by whom any cause or matter may be heard or tried, with or without a jury, or before whom any cause or matter may be brought by way of appeal, to inspect any property or thing concerning which any question may arise therein. (E. 660.)
5. The provisions of Rule 3 of this Order shall apply to inspection by a jury, and in such case the Court or a Judge may make all such orders upon the Sheriff or other person as may be necessary to procure the attendance of a special or common jury at such time and place, and in such manner as they or he may think fit. (E. 661.)
6. An application for an order under section 13, sub-section (7), of the Act, or under Rules 2 or 3 of this Order, may be made to the Court or a Judge by any party. If the application be by the plaintiff for an order under the said sub-section (7) it may be made either *ex parte* or with notice, and if for an order under Rules 2 or 3 of this Order it may be made after notice to the defendant, at any time after the issue of the writ of summons, and if it be by any other party, then on notice to the plaintiff, and at any time after appearance by the party making the application. (E. 662.)
7. An application for an order under Rule 1 of this Order may be made by the plaintiff at any time after his right thereto appears from the pleadings; or, if there be no pleadings, is made to appear by affidavit or otherwise to the satisfaction of the Court or a Judge. (E. 663.)
8. Where an action is brought to recover, or a defendant in his defence seeks by way of counter-claim to recover specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court or a Judge may, at any time after such last-mentioned claim appears from the

pleadings, or, if there be no pleadings, by affidavit or otherwise to the satisfaction of such Court or Judge, order that the party claiming to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as such Court or Judge may direct, and that, upon such payment into Court being made, the property claimed be given up to the party claiming it. (E. 664.)

Order L.  
rr. 9-14.

9. Where any real or personal estate forms the subject of any proceedings, and the Court or a Judge is satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such proceedings, the Court or Judge may at any time after the commencement of the proceedings, allow to the parties interested therein, or any one or more of them, the whole or part of the annual income of the real estate or a part of the personal estate, or the whole or part of the income thereof, up to such time as the Judge shall direct. (E. 665.)

(620.)  
Income may be appropriated.

10. Whenever in an action for the administration of the estate of a deceased person, or execution of the trusts of a written instrument, a sale is ordered of any property vested in any executor, administrator, or trustee, the conduct of such sale shall be given to such executor, administrator, or trustee, unless the Court or a Judge shall otherwise direct. (E. 666.)

(621.)  
Conduct of sale, under will, &c.

11. No writ of injunction shall be issued. An injunction shall be by a judgment or order, and any such judgment or order shall have the effect which a writ of injunction heretofore had. (E. 667.)

(622.)  
No writ of injunction.

12. In any cause or matter in which an injunction has been, or might have been claimed, the plaintiff may, before or after judgment, apply for an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful act or breach of contract complained of, or from the commission of any injury or breach of contract of a like kind relating to the same property or right, or arising out of the same contract; and the Court or a Judge may grant the injunction, either upon or without terms, as may be just. (E. 668.)

(623.)  
Restraining repetition of wrongful act

13. Leave to compound a penal action shall not be given in cases where any part of the penalty goes to the Crown, unless notice shall first have been given to the proper officer; but in other cases it may be given without notice to any officer. (E. 669.)

(624.)  
Leave to compound penal action.

14. The order to compound a penal action shall expressly state that the defendant undertakes to pay the

(625.)  
Order to compound penal action.

Order L.  
rr. 15—19. sum for which the Court has given him leave to compound the action. (E. 670.)

(626.)  
Appropriation of penalty. 15. When leave is given to compound a penal action, where part of the penalty goes to the Crown, the Queen's half of the composition shall be applied as the penalty would have been, if enforced. (E. 671.)

2.—RECEIVERS.

(627.)  
Security by receiver. 16. Where an order is made directing a receiver to be appointed, unless otherwise ordered, the person to be appointed shall first give security, to be allowed by the Court or a Judge and taken before a person authorized to administer oaths, duly to account for what he shall receive as such receiver, and to pay the same as the Court or Judge shall direct; and the person so to be appointed shall, unless otherwise ordered, be allowed a proper salary or allowance. Allowance.  
Form of security. Such security shall be by recognizance in the Form No. 19 in Appendix L., unless the Court or a Judge shall otherwise order. (E. 672.)

(628.)  
Adjournment to chambers. 17. Where any judgment or order is pronounced or made in Court, appointing a person therein named to be receiver, the Court or a Judge may adjourn to Chambers the cause or matter then pending, in order that the person named as receiver may give security as in the last preceding Rule mentioned, and may thereupon direct such judgment or order to be drawn up. (E. 673.)

(629.)  
Regulations as to receivers' accounts. 18. When a receiver is appointed with a direction that he shall pass accounts, the Court or Judge shall fix the days upon which he shall (annually, or at longer or shorter periods,) file and pass such accounts, and also the days upon which he shall pay the balances appearing due on the accounts so filed, or such part thereof as shall be certified as proper to be paid by him. And with respect to any such receiver as shall neglect to file and pass his accounts and pay the balances thereof at the time so to be fixed for that purpose as aforesaid, the Judge before whom any such receiver is to account, or the Judge who shall have cognizance of the matter for the time being, may, from time to time, when his subsequent accounts are produced to be examined and passed, disallow the salary therein claimed by such receiver, and may also, if he shall think fit, charge him with interest at the rate of seven per cent. per annum upon the balances so neglected to be paid by him during the time the same shall appear to have remained in the hands of any such receiver. (E. 674.)

(630.)  
Form of accounts. 19. Receivers' accounts shall be in the Form No. 13, in Appendix L., with such variations as circumstances may require. (675.)

20. Every receiver shall file his account, together with an affidavit verifying the same in the Form No. 20, in Appendix L., with such variations as circumstances may require. An appointment shall thereupon be obtained by the plaintiff, or person having the conduct of the cause, for the purpose of passing such account. (E. 676.)

Order L.  
r r. 20-23.

(631.)  
Passage of  
accounts.

21. In case of any receiver failing to file any account or affidavit, or to pass such account, or to make any payment, or otherwise, the receiver or the parties, or any of them, may be required to attend at Chambers to show cause why such account or affidavit has not been filed, or such account passed, or such payment made, or any other proper proceeding taken, and thereupon such directions as shall be proper may be given at Chambers, or by adjournment into Court, including the discharge of any receiver and appointment of another, and payment of costs. (E. 677.)

(632.)  
Receiver in  
default.

22. When a receivership has been completed, the book containing the accounts shall be deposited in the Prothonotary's office. (E. 678.)

(633.)  
Receiver's book,  
deposit of.

3.—LIQUIDATORS.

23. The accounts of liquidators shall be passed and verified in the same manner as is by this Order directed as to receivers' accounts. (E. 679.)

(634.)  
Liquidator's ac  
counts.

ORDER LI.

Order LI.  
r. 1.

SALES BY THE COURT.

1.—Lunatics' and Infants' Estates.

1. Lunatics and persons *non compos mentis*, and infants seised of real estate, or entitled to any term of years in lands, may by their next friends or guardians petition the Court for an order to sell or dispose of such property, and the Court or a Judge may proceed in a summary manner, on affidavits to inquire into the merits of the application; and if the disposal of such property, or any part thereof, be necessary for the support of any such lunatic, or person *non compos mentis*, or infant, or for his education, or for the education or support of the infant children of the lunatic or person *non compos mentis* furnished or to be furnished, or if the interests of the infant or lunatic or person *non compos mentis*, or his infant children, will be substantially promoted by such

(635.)  
Proceedings as to  
real estate of  
lunatics, infants,  
&c.

Order LI.  
rr. 2-5.

disposal, on account of any part of his said property being exposed to waste or dilapidation, or being wholly unproductive, or for any other reasonable cause; the Court or a Judge may, on the filing of a bond by such guardian or next friend, or other person appointed by the Court or Judge, in case there be not already a lawfully appointed guardian, with such sureties, in such form, and on such terms and conditions as shall be directed, order the letting for a term of years, the sale, mortgage or other disposal of such real estate or interest, whether possessory or reversionary, by such guardian or next friend, or person appointed by the Court or Judge, in such manner, and with such restrictions as shall be deemed expedient, but not in any case contrary to any last will or conveyance by which such estate or term was devised or conveyed to such infant, unless where the support and maintenance of the lunatic or person *non compos mentis*, or his infant children, or the support and maintenance of the infant shall have required or shall then require it; and it shall be so expressed in the order. (E. A. 59.)

(636.)  
Effect of order.

2. All sales, leases, mortgages, or conveyances made in good faith by any guardian or next friend, in pursuance of such order, shall be as effectual as if made by such lunatic or person *non compos mentis* after his restoration to reason, or such infant after he had attained the age of twenty-one years; and it shall not be necessary in the conveyance to recite any part of the proceedings, but the same shall briefly refer to the order and the sale, leasing, or other disposal of such property. The party making the sale shall file a report thereof with the Prothonotary of the county in which the lands are situate. (E. A. 60.)

Nature of conveyance.

Report filed.

(637.)  
Proceeds of sale under order, how disposed of.

3. Upon any order for the sale of any property being made as aforesaid, the Court or Judge may make such order for the investment, disposal and application of the proceeds of such property, and of the increase and interest arising therefrom, as shall secure the same for the benefit of the lunatic or person *non compos mentis* or his infant children, or of the infant. (E. A. 61.)

(638.)  
Effect of sale.

4. No sale made as aforesaid shall give to any such lunatic or person *non compos mentis* or infant any other or greater interest or estate in the proceeds of such sale than he had in the estate so sold. (E. A. 62.)

(639.)  
Effect of conveyance.

5. Every conveyance made under the above provisions, and registered in the county where the lands lie, shall be taken as presumptive evidence that all the proceedings on which the same is founded were rightly had. (E. A. 63.)

2.—*Generally.*

Order LI.  
rr. 6—11.

6. If in any cause or matter relating to any real estate, in respect of which the Court has power to order a sale, it shall appear necessary or expedient that the real estate or any part thereof should be sold, the Court or a Judge may order the same to be sold, and any party bound by the order and in possession of the estate, or in receipt of the rents and profits thereof, shall be compelled to deliver up such possession or receipt to the purchaser, or such other person as may be thereby directed. (E. 680.)

(640.)  
General power to order sale of real estate.

7. Before any estate or interest shall be put up for sale under a judgment or order, a certificate or abstract of the title shall, unless otherwise ordered, be laid before the Court or Judge to enable proper directions to be given respecting the conditions of sale, and other matters connected with the sale, and the same may be referred to counsel, approved by the Court or Judge, for his opinion thereon. (E. 681.)

(641.)  
Title may be referred to counsel.

8. Where a judgment or order is given or made, whether in Court or in Chambers, directing any property to be sold unless otherwise ordered, the same shall be sold, with the approbation of the Court or a Judge, to the best purchaser that can be got, the same to be allowed by the Judge, and all proper parties shall join in the sale and conveyance as the Judge shall direct. (E. 682.)

(642.)  
Judge to approve sale; and all parties to join.

9. Affidavits for the purpose of enabling the Judge to fix reserved biddings shall state the value of the property by reference to an exhibit containing such value, so that the value may not be disclosed by the affidavit when filed. (E. 683.)

(643.)  
Affidavits as to value.

3.—*Foreclosure.*

10. If, in any foreclosure suit, the sale of the mortgaged property shall be sought by a subsequent mortgagee or encumbrancer, or by the mortgagor, or by any persons claiming under them respectively, the Court or Judge shall not direct any such sale without the consent of the first mortgagee, or the persons claiming under him, except upon such terms as the Court or Judge may think fit and proper, which terms may include the deposit of money in Court. (E. A. 40.)

(644.)  
Sales of mortgaged property, how ordered on behalf of subsequent encumbrancers.

11. In a suit for foreclosure or sale, upon payment by the defendant, or in a suit for redemption, on payment by the plaintiff, or payment of the amount found due, the plaintiff or defendant shall, unless the Court or a Judge otherwise directs, assign and convey the mortgaged premises in question to the defendant (or plaintiff, as the

(645.)  
Assignment of property and delivery of documents.

Order LI. case may be) making the payment, or to whom he may  
 r. 12. appoint, free and clear of all encumbrances done by him,  
 and deliver up all deeds and writings in his custody or  
 power, relating thereto, upon oath, and in case of a  
 corporation the affidavit shall be made by the officer thereof  
 having the custody of such deeds and writings. (O. 336.)

(646.)  
 Property in ad- 12. Whenever any real estate, bound by a judgment  
 joining counties. or mortgage, is situate in adjoining counties, with the  
 county line running through the same, the Sheriff of either  
 of said counties may sell the whole property under order  
 of foreclosure and sale, or under execution issued on a  
 judgment duly recorded in both counties, but subject to  
 such terms and conditions as to the Court or a Judge may  
 seem just. (C. 13 of 1880, sec. 22.)

Order LII.  
 rr. 1-4.

ORDER LII.

MOTIONS AND OTHER APPLICATIONS.

(647.)  
 Application to 1. Where by these Rules any application is authorized  
 Court or Judge to be made to the Court or a Judge, such application, if  
 in Court to be by made to the Court, or to a Judge in Court, shall be made  
 motion. by motion. (E. 696.)

(648.)  
 No rules nisi in 2. No motion or application for a rule nisi or order to  
 certain cases. show cause shall hereafter be made in any action, or (a) to  
 set aside, remit, or enforce an award, or (b) for attachment,  
 or (c) to answer the matters in an affidavit, or (d) to strike  
 off the rolls, or (e) against a Sheriff to pay money levied  
 under an execution. (E. 697.)

(649.)  
 Notice of motion 3. Except where according to the practice existing on  
 the nineteenth day of April, A. D. 1884, any order or rule  
 might be made absolute *ex parte* in the first instance, and  
 except where notwithstanding Rule 2 a motion or applica-  
 tion may be made for an order to shew cause only, no  
 motion shall be made without previous notice to the  
 parties affected thereby. But the Court or a Judge, if  
 satisfied that the delay caused by proceeding in the ordinary  
 way would or might entail irreparable or serious mischief,  
 may make any order *ex parte* upon such terms as to costs  
 or otherwise and subject to such undertaking, if any, as the  
 Court or Judge may think just; and any party affected by  
 such order may move to set it aside or to vary it. (E. 698.)

(650.)  
 Contents of no- 4. Every notice of motion to set aside, remit, or  
 tice in certain enforce an award, or for attachment, or to strike off the  
 cases. rolls, shall state in general terms the grounds of the  
 application; and, where any such motion is founded on  
 Affidavits. evidence by affidavit, a copy of any affidavit intended

to be used shall be served with the notice of motion. (E. 699.)

Order LII.  
rr. 5—11.

5. Unless the Court or a Judge give special leave to the contrary there must be at least two clear days between the service of a notice of motion and the day named in the notice for hearing the motion; provided that in applications to answer the matters in an affidavit, or to strike off the rolls, the notice of motion shall be served on the parties not less than ten clear days before the time fixed by the notice for making the motion. (E. 700.)

(651.)  
Length of notice.

6. If on the hearing of a motion or other application the Court or a Judge shall be of opinion that any person to whom notice has not been given ought to have or to have had such notice, the Court or Judge may either dismiss the motion or application, or adjourn the hearing thereof, in order that such notice may be given, upon such terms, if any, as the Court or Judge may think fit to impose. (E. 701.)

(652.)  
Notice not served on all proper parties.

7. The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the Court or Judge shall think fit. (E. 702.)

(653.)  
Adjournment.

8. The plaintiff shall, without any special leave, be at liberty to serve any notice of motion or other notice or any petition or summons upon any defendant, who, having been duly served with a writ of summons to appear, has not appeared within the time limited for that purpose. (E. 703.)

(654.)  
Service on defendant who has not appeared.

9. The plaintiff may, by leave of the Court or a Judge to be obtained *ex parte*, serve any notice of motion upon any defendant along with the writ of summons or at any time after service of the writ of summons and before the time limited for the appearance of such defendant. (E. 704.)

(655.)  
Service with writ, or before time for appearance.

10. No order shall issue for the return of any writ, or order, or to bring in the body of a person ordered to be attached, arrested or committed; but a notice from the person issuing the writ, or obtaining the order for attachment, arrest, replevin, or committal (if not represented by a solicitor), or by his solicitor, calling upon the Sheriff to return such writ, or order, or to bring in the body within a given time, if not complied with, shall entitle such person to apply for an order for the committal of such Sheriff. (E. 706.)

(656.)  
No order for return of writ.

11. When any Sheriff shall, before going out of office, arrest any defendant, and render return of *cepi corpus*, he may be called upon by a notice, as provided by the last preceding Rule to bring in the body within the time

(657.)  
Notice on retired Sheriff.



Order LII. allowed by law, although he may be out of office before  
rr. 12-16. such notice is given. (E. 707.)

(658.)  
 Date of order

12. Every order, if and when drawn up, shall be dated the day of the week, month, and year, on which the same was made, unless the Court or a Judge shall otherwise direct, and shall take effect accordingly. (E. 708.)

(659.)  
 Certain orders need not be drawn up.

13. Where an order has been made not embodying any special terms, nor including any special directions, but simply enlarging time for taking any proceeding or doing any act or giving leave (*a*) for the issue of any writ other than a writ of attachment, (*b*) for the amendment of any writ or pleadings, (*c*) for the filing of any document, or (*d*) for any act to be done by an officer of the Court other than a solicitor, it shall not be necessary to draw up such order, unless the Court or a Judge shall otherwise direct; but the production of a note or memorandum of such order, signed by a Judge or Prothonotary, shall be sufficient authority for such enlargement of time, issue, amendment, filing, or other act. A direction that the costs of such order shall be costs in any cause or matter shall not be deemed a special direction within the meaning of this Rule. The solicitor of the person on whose application such order is made, shall forthwith give notice in writing thereof to such person (if any) as would, if this Rule had not been made, have been required to be served with such order. (E. 709.)

(660.)  
 Statement of persons to be served with petition.

14. At the foot of every petition (not being a petition of course) presented to the Court, and of every copy thereof, a statement shall be made of the persons, if any, intended to be served therewith, and if no person is intended to be served, a statement to that effect shall be made at the foot of the petition and of every copy thereof. (E. 711.)

(661.)  
 Time for hearing a petition.

15. Unless the Court or a Judge gives leave to the contrary, there must be at least two clear days between the service and the day appointed for hearing a petition. (E. 712.)

(662.)  
 Application for moneys in Court

16. In the case of applications under Acts directing the purchase money of any property sold to be paid into Court, any person claiming to be entitled to the money so paid in must make an affidavit not only verifying their title, but also stating that they are not aware of any right in any other person, or of any claim made by any other person, to the sum claimed, or to any part thereof, or, if the petitioners are aware of any such right or claim, they must in such affidavit state or refer to and except the same. (E. 713.)

ORDER LIII.

Order LIII.  
r. 1—9.

1.—ACTION OF MANDAMUS.

1. The plaintiff, in any action in which he shall claim a mandamus to command the defendant to fulfil any duty, in the fulfilment of which the plaintiff is personally interested, shall indorse such claim upon the writ of summons. (E. 719.)

(663.)  
Mandamus to be claimed on writ of summons.

2. The indorsement shall be in the Form given in Section 4 of Appendix A., Part III. (E. 720.)

(664.)  
Form of indorsement.

3. If judgment be given for the plaintiff the Court or Judge may by the judgment command the defendant either forthwith, or on the expiration of such time and upon such terms as may appear to the Court or a Judge to be just, to perform the duty in question. The Court or a Judge may also extend the time for the performance of the duty. (E. 721.)

(665.)  
Power of Court.

4. No writ of mandamus shall hereafter be issued in an action, but a mandamus shall be by judgment or order, which shall have the same effect as a writ of mandamus heretofore had. (E. 722.)

(666.)  
Judgment or order instead of writ of mandamus.

2.—PREROGATIVE MANDAMUS.

5. Application for a prerogative writ of mandamus shall be made to the Court according to the practice heretofore in use. (E. 723.)

(667.)  
Application for prerogative writ.

6. The Court or a Judge may, if they or he think fit, order that any writ of mandamus shall be preemptory in the first instance. (E. 724.)

(668.)  
Writ may be preemptory.

7. Every writ of mandamus shall bear date on the day when it is issued. The writ may be made returnable forthwith, or time may be allowed to return it, either with or without terms, as the Court thinks fit. A writ of mandamus shall be in the Form in Appendix J., with such variations as circumstances may require. (E. 725.)

(669.)  
Return and Form of writ.

8. Any person by law compellable to make any return to a writ of mandamus shall make his return to the first writ. (E. 726.)

(670.)  
First writ returnable.

9. When any return is made to a writ of mandamus, other than an unconditional compliance therewith, the applicant may plead to the return within such time and in like manner as if the return were a statement of defence delivered in an action; and, subject to these Rules, this pleading and all subsequent proceedings, including pleadings,

(671.)  
Pleadings and proceedings on mandamus.

**Order LIII.** trial, judgment, and execution, shall proceed and may be  
**rr. 10—15.** had and taken as if in an action. (E. 727.)

(672.)  
 Point of law  
 raised.

10. Where a point of law is raised in answer to a return or any other pleading in mandamus, and there is no issue of fact to be decided, the Court shall, on the argument of the point of law, give judgment for the successful party, without any motion for judgment being made or required. (E. 728.)

(673.)  
 Peremptory writ  
 to enforce judg-  
 ment.

11. Where, under Rules 9 and 10, the applicant obtains judgment, he shall be entitled forthwith to a peremptory writ of mandamus to enforce the command contained in the original writ, and the judgment shall direct that a peremptory writ do issue. (E. 729.)

(674.)  
 Indemnity.

12. No action or proceeding shall be commenced or prosecuted against any person in respect of anything done in obedience to a writ of mandamus issued by the Court or any Judge thereof. (E. 730.)

(675.)  
 Persons really in-  
 terested to have  
 conduct of pro-  
 ceedings.

13. When it appears to the Court that the respondent claims no right or interest in the subject-matter of the application, or that his functions are merely ministerial, the return to the writ, and all subsequent proceedings down to judgment, shall still be made and proceed in the name of the person to whom the writ is directed, but if the Court thinks fit so to order, may be expressed to be made on behalf of the persons really interested therein. In that case the persons interested shall be permitted to frame the return and conduct the subsequent proceedings at their own expense; and if judgment is given for or against the applicant it shall likewise be given for or against the persons in whose behalf the return is expressed to be made; and if judgment is given for them, they shall have the same remedies for enforcing it as the person to whom the writ is directed would have in other cases. (E. 731.)

(676.)  
 No abatement by  
 death, &c.

14. Where, under the last preceding Rule, the return to a writ of mandamus is expressed to be made on behalf of some person other than the person to whom the writ is directed, the proceedings on the writ shall not abate by reason of the death, resignation, or removal from office of that person, but they may be continued and carried on in his name; and if a peremptory writ is awarded, it shall be directed to the successor in office or right of that person. (E. 732.)

(677.)  
 Application  
 certain Rules.

15. The provisions of Order XL., Rule 24, shall apply of to mandamus, and also the provisions of the following orders, namely:

- (a.) Order XXVIII., (Amendments.)
- (b.) Order XXXIII., (Special case.)
- (c.) Order XXXVI., (Affidavits.)
- (d.) Order LII., (Motions.)
- (e.) Order LVII., (Appeals.)
- (f.) Order LX., (Time.)
- (g.) Order LXIII., (Costs.)
- (h.) Order LXIV., (Notices, &c.)
- (i.) Order LXVIII., (Non-compliance.)

Order LIII.  
r. 15.

In any case of mandamus, in which a proceeding by way of interpleader may be proper, the provisions of Order LVI. shall be applicable, so far as the nature of the case will admit. (E. 733.)

ORDER LIV.

APPLICATIONS AND PROCEEDINGS AT CHAMBERS.

Order LIV.  
r. 1-6.

1. Every application at Chambers not made *ex parte*, or on notice, shall be made by summons. (E. 734.) (678.)  
Application to be by notice or summons.
2. Every application for payment or transfer out of Court made *ex parte*, and every other application made *ex parte* in which the Judge or proper officer shall think fit so to require, shall be made by summons. (E. 735.) (679.)  
Certain applications to be by summons.
3. Summonses shall not be altered after they are sealed except upon application at Chambers. (E. 736.) (680.)  
Alteration of summonses.
4. An originating summons, where service is necessary, shall be served seven clear days before the return thereof. Every other summons shall be served two clear days before the return thereof, unless in any case it shall be otherwise ordered. (E. 737.) (681.)  
Service of originating summonses.
5. Where any of the parties to a summons fail to attend, whether upon the return of the summons, or at any time appointed for the consideration or further consideration of the matter, the Judge may proceed *ex parte*, if, considering the nature of the case, he think it expedient so to do; no affidavit of non-attendance shall be required or allowed, but the Judge may require such evidence of service as he may think just. (E. 738.) (682.)  
Persons summoned failing to attend.
6. Where the Judge has proceeded *ex parte*, such proceeding shall not in any manner be reconsidered in Chambers, unless the Judge shall be satisfied that the party failing to attend was not guilty of wilful delay or negligence; and in such case the costs occasioned by his non-attendance shall be in the discretion of the Judge, who may fix the same at the time, and direct them to be (683.)  
Matter not to be re-opened.

Order LIV.  
rr. 7—14. paid by the party or his solicitor before he shall be permitted to have such proceeding reconsidered, or make such other order as to such costs as he may think just. (E. 739.)

(684.)  
Costs. 7. Where a proceeding in Chambers fails by reason of the non-attendance of any party, and the Judge does not think it expedient to proceed *ex parte*, the Judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the absent party or by his solicitor personally. (E. 740.)

(685.)  
Matters not disposed of. 8. Where matters in respect of which summonses have been issued are not disposed of upon the return of the summons, the parties shall attend from time to time without further summons, at such time or times as may be appointed for the consideration or further consideration of the matter. (E. 741.)

(686.)  
More than one matter included. 9. In every cause or matter where any party thereto makes any application at Chambers, either by way of summons or otherwise, he shall be at liberty to include in one and the same application all matters upon which he then desires the order or directions of the Court or Judge; and upon the hearing of such application it shall be lawful for the Court or Judge to make any order and give any directions relative to or consequential on the matter of such application as may be just; any such application may, if deemed fit, be adjourned from Chambers into Court, or from Court into Chambers. (E. 742.)

(687.)  
Form of summons. 10. A summons other than an originating summons shall be in the Form No. 1 in Appendix K, with such variations as circumstances may require, and shall be addressed to all the persons on whom it is to be served. (E. 743.)

(688.)  
How issued. 11. In all cases of applications originating in Chambers, a summons shall be prepared by the applicant or his solicitor, and shall be sealed by the Prothonotary, and when so sealed shall be deemed to be issued. The person obtaining a summons shall leave at the Prothonotary's office a copy thereof, which shall be filed. (E. 744.)

(689.)  
Appeal from Judge at Chambers. 12. The appeal from the decision of a Judge at Chambers shall be to the Court.

(690.)  
List of summonses. 13. Each summons shall, when issued, be entered by the proper officer in a list. (E. 760.)

(691.)  
Order of business. 14. The summonses in the list for hearing by a Judge shall be called on in their order. If when a summons is called on neither party appears, the summons shall be passed over until the list has been gone through. The summonses passed over shall then be called on a second

time in their order. If neither party appears to a summons so called on it shall be struck out. (E. 761.) Order LIV.  
r. 15.

15. An order shall be in the Form No. 2 in Appendix K., with such variations as circumstances require. It shall be marked with the name of the Judge by whom it is made. (E. 762.) (692.)  
Form of order.

ORDER LV.

Order LV.  
r 1.

CHAMBERS IN RELATION TO CHANCERY (OR EQUITY) MATTERS.

*1.—General.*

1. The business to be disposed of in Chambers shall include the following matters, in addition to the matters which under any other Rule or by statute may be disposed of in Chambers: (693.)  
What shall be  
done at Cham-  
bers.

- (1.) Applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter where there has been a judgment or order declaring the rights or where the title depends only upon proof of the identity or the birth, marriage, or death of any person; Payment out un-  
der judgment  
declaring rights.
- (2.) Applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter where the cash does not exceed \$4000 or the securities do not exceed \$4000 nominal value; Payment out  
where funds  
under \$4000.
- (3.) Applications for payment to any person of the dividend or interest on any securities standing to the credit of any cause or matter, whether to a separate account or otherwise; Payment of divi-  
dends.
- (4.) Applications as to guardianship and maintenance or advancement of infants; Guardianship of  
infants.
- (5.) Applications connected with the management of property; Property man-  
agement.
- (6.) Applications for or relating to the sale by auction or private contract of property, and as to the manner in which the sale is to be conducted, and for payment into Court and investment of the purchase money; Sales.
- (7.) Applications for orders on the further consideration of any cause or matter where the order to be made is for the distribution of assets of a debtor, or for the distribution of the estate of an intestate, or for the distribution of a fund among creditors or debenture holders; Insolvent and in-  
testate estates.

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|--|--|
| <p>Order LV.<br/>rr. 2-3.<br/>Pleadings, discovery, &amp;c.<br/>Other matters.</p> | <p>(8.) Applications for time to plead, for leave to amend pleadings, for discovery and production of documents, and generally all applications relating to the conduct of any cause or matter ;</p> <p>(9.) Such other matters as may be deemed proper to be disposed of at Chambers. (E. 764.)</p> |
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*2.—Administrations and Trusts.*

(894.)  
Certain ques-  
tions to be set-  
tled without ad-  
ministration.

2. The executors or administrators of a deceased person or any of them, and the trustees under deed or instrument or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, next of kin, or heir-at-law of a deceased person, or as *cestui que trust* under the trust of any deed or instrument, or as claiming by assignment, or otherwise, under any such creditor or other person as aforesaid, may take out, as of course, an originating summons returnable in Chambers for such relief of the nature or kind following, as may by the summons be specified, and as the circumstances of the case may require, (that is to say) the determination, without an administration of the estate or trust, of any of the following questions or matters :—

- (a.) Any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next of kin, or heir-at-law, or *cestui que trust* ;
- (b.) The ascertainment of any class of creditors, legatees, devisees, next of kin, or others ;
- (c.) The furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (when necessary) of such accounts ;
- (d.) The payment into Court of any money in the hands of the executors or administrators or trustees ;
- (e.) Directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees ;
- (f.) The approval of any sale, purchase, compromise, or other transaction ;
- (g.) The determination of any question arising in the administration of the estate or trust. (E. 765.)

(895.)  
Applications for  
administrations, may

3. Any of the persons named in the last preceding Rule in like manner apply for and obtain an order for :—

- (a.) The administration of the personal estate of the deceased ;

(b.) The administration of the real estate of the deceased; Order LV.  
r. r. 4-7.

(c.) The administration of the trust. (E. 766.)

4. The persons to be served with the summons under the last two preceding Rules in the first instance shall be the following; (that is to say)— (696.)  
The persons to  
be served with  
summons.

A. Where the summons is taken out by an executor or administrator or trustee,—

(a.) For the determination of any question, under sub-sections (a.), (e.), (f.), or (g.), of Rule 2, the persons, or one of the persons, whose rights or interests are sought to be affected;

(b.) For the determination of any question, under sub-section (b.) of Rule 2, any member or alleged member of the class;

(c.) For the determination of any question, under sub-section (c.) of Rule 2, any person interested in taking such accounts;

(d.) For the determination of any question, under sub-section (d.) of Rule 2, any person interested in such money;

(e.) For relief under sub-section (a.) of Rule 3, the residuary legatees, or next of kin, or some of them;

(f.) For relief under sub-section (b.) of Rule 3, the residuary devisees, or heirs, or some of them;

(g.) For relief under sub-section (c.) of Rule 3, the *cestuis que trust*, or some of them;

(h.) If there are more than one executor or administrator or trustee, and they do not all concur in taking out the summons, those who do not concur.

B. Where the summons is taken out by any person other than the executors, administrators, or trustees, the said executors, administrators or trustees. (E. 767.)

5. The Court or a Judge may direct such other persons to be served with the summons as they or he may think fit. (697.)  
Directions to  
serve others  
(E. 768.)

6. The application shall be supported by such evidence as the Court or a Judge may require, and directions may be given as they or he may think just for the trial of any questions arising thereout. (698.)  
Evidence on ap-  
plication. (E. 769.)

7. It shall be lawful for the Court or a Judge upon such summons to pronounce such judgment as the nature of the case may require. (699.)  
Judgment. (E. 770.)



Order LV.  
rr. 8—12.  
(700.)  
Special direc-  
tions.

8. The Court or a Judge may give any special directions touching the carriage or execution of the judgment, or the service thereof upon persons not parties, as they or he may think just. (E. 771.)

(701.)  
No administra-  
tion unless  
necessary.

9. It shall not be obligatory on the Court or a Judge to pronounce or make a judgment or order, whether on summons or otherwise, for the administration of any trust or of the estate of any deceased person, if the questions between the parties can be properly determined without such judgment or order. (E. 772.)

(702.)  
Saving in favor  
of trustees, &c.

10. The issue of a summons under Rule 2 of this Order, shall not interfere with or control any power or discretion vested in any executor, administrator, or trustee, except so far as such interference or control may necessarily be involved in the particular relief sought. (E. 774.)

(703.)  
Trustees, &c.,  
may apply to  
Judge for di-  
rections.

11. Any trustee, executor, or administrator shall be at liberty, without the institution of a suit, to apply by petition to the Court or a Judge, for opinion, advice, or direction on any question respecting the management or administration of the trust property, or the assets of any testator or intestate, such application to be served upon, or the hearing thereof to be attended by, all persons interested in such application, or such of them as the Court or Judge shall think expedient. And it shall be in the power of the Court or Judge to direct any question arising on any such application to be argued, and to appoint counsel for that purpose where the parties fail and it appears necessary to do so. The trustee, executor, or administrator acting upon the opinion, advice, or direction given by the Court or Judge, shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, executor, or administrator, in the subject-matter of such application: Provided, nevertheless, that this Rule shall not extend to indemnify any trustee, executor, or administrator in respect of any act done in accordance with such opinion advice, or direction, as aforesaid, if such trustee, executor, or administrator shall have been guilty of any fraud, or wilful concealment, or misrepresentation, in obtaining such opinion, advice, or direction. The costs of such application, arguments, and counsel, as aforesaid, and the party or funds by or out of which they shall be paid, shall be in the discretion of the Court or Judge. (E. A. 30.)

Proceedings on  
application.

Effect of direc-  
tions.

Costs.

### 3.—Assistance of Experts.

(704.)  
Judge in Cham-  
bers may call ex-  
perts.

12. The Judge in Chambers may, in such way as he thinks fit, obtain the assistance of accountants, merchants, engineers, actuaries, and other scientific persons, the better

to enable any matter at once to be determined, and he may act upon the certificate of any such person. (E. 781.) Order LV.  
rr. 13—17.

4.—*Summonses in Chambers.*

13. An originating summons shall be in the Form No. 21 in Appendix L, with such variations as circumstances may require. It shall be prepared by the applicant or his solicitor, and shall be sealed in the Prothonotary's office, and when so sealed shall be deemed to be issued. The person obtaining the summons shall leave at the Prothonotary's office a copy thereof, which shall be filed. (E. 782.) (705.)  
Form and issue  
of originating  
summons.

14. Where from any cause an originating summons may not have been served upon any party seven clear days before the return thereof, an indorsement may be made on the summons, and on a copy thereof stamped for service, appointing a new time for the parties not before served to attend at Chambers, and such indorsements shall be sealed, and the service of the copy so indorsed and sealed shall have the same force and effect as the service of an originating summons, and where any party has been served before such indorsement, the hearing thereof may, upon the return of the summons, be adjourned to the new time so appointed. (E. 784.) (706.)  
Proceedings if  
summons not  
served in time.

15. The parties served with an originating summons shall, before they are heard in Chambers, enter appearances and give notice thereof. (707.)  
Appearances to  
be entered.

5.—*Proceedings relating to Infants.*

16. Upon application for the appointment of guardians of infants and allowance for maintenance the evidence shall show— (708.)  
Evidence on ap-  
plication for  
guardianship.

- (a.) The ages of the infants ;
- (b.) The nature and amount of the infants' fortunes and incomes ;
- (c.) What relations the infants have. (E. 787.)

17. At any time during the proceedings at Chambers under any judgment or order, the Judge may, if he shall think fit, require a guardian *ad litem* to be appointed for any infant or person of unsound mind not so found by inquisition or judicial decision, who has been served with notice of such judgment or order. (E. 789.) (709.)  
Appointment of  
guardian *ad  
litem*.

Order LV.  
r r. 18—22.

6.—*Summonses to Proceed.*

(710.)  
Time for bringing in judgment directing accounts.

18. Every judgment or order directing accounts or inquiries to be taken or made shall be brought into Chambers by the party entitled to prosecute the same within ten days after the same shall have been passed and entered, and in default thereof any other party to the cause or matter shall be at liberty to bring in the same, and such party shall have the prosecution of such judgment or order unless the Judge shall otherwise direct. (E. 794.)

(711.)  
Directions for proceedings.

19. Upon a copy of the judgment or order being filed, a summons shall be issued to proceed with the accounts or inquiries directed, and upon the return of such summons the Judge, if satisfied by proper evidence that all necessary parties have been served with notice of the judgment or order, shall thereupon give directions as to the manner in which each of the accounts and inquiries is to be prosecuted, the evidence to be adduced in support thereof, the parties who are to attend on the several accounts and inquiries, and the time within which each proceeding is to be taken, and a day or days may be appointed for the further attendance of the parties, and all such directions may afterwards be varied by addition thereto or otherwise, as may be found necessary. (E. 795.)

(712.)  
Settling deed.

20. Where by a judgment or order a deed is directed to be settled by the Judge in Chambers in case the parties differ, a summons to proceed shall be issued, and upon the return of the summons the party entitled to prepare the draft deed shall be directed to deliver a copy thereof, within such time as the Judge shall think fit, to the party entitled to object thereto, and the party so entitled to object shall be directed to deliver to the other party, a statement in writing of his objections (if any) within eight days after the delivery of such copy, and the proceedings shall be adjourned until after the expiration of the said period of eight days. (E. 796.)

(713.)  
Service of notice of judgment may be dispensed with.

21. Where, upon the hearing of the summons to proceed, it appears to the Judge that by reason of absence, or for any other sufficient cause, the service of notice of the judgment or order upon any party cannot be made or ought to be dispensed with, the Judge may, if he shall think fit, wholly dispense with such service, or may at his discretion order any substituted service, or notice by advertisement or otherwise in lieu of such service. (E. 797.)

(714.)  
Direction for advertisement for necessary parties.

22. If on the hearing of the summons to proceed it shall appear that all necessary parties are not parties to the action, or have not been served with notice of the judgment

or order, directions may be given for advertisement for creditors, and for filing the accounts, but the adjudication on creditors' claims and the accounts are not to be proceeded with, and no other proceeding is to be taken, except for the purpose of ascertaining the parties to be served, until all necessary parties shall have been served, and are bound, or service shall have been dispensed with, and until directions shall have been given as to the parties who are to attend on the proceedings. (E. 798.)

Order LV.  
rr. 23-25.

23. The course of proceeding in Chambers shall ordinarily be the same as the course of proceeding in Court upon motions. Copies, abstracts, or extracts of or from accounts, deeds, or other documents, and pedigrees, and concise statements shall, if directed, be supplied for the use of the Judge, and where so directed, copies shall be handed to the other parties. But no copies shall be made of deeds or documents where the originals can be brought in, unless the Judge shall otherwise direct.

(715.)  
Procedure at  
Chambers.

7.—*Summons Book.*

24. At the time any summons is obtained, an entry thereof shall be made in the Summons Book, stating the date on which the summons is issued, the name of the cause or matter, and by what party; and shortly for what purpose such summons is obtained, and at what time such summons is returnable. (E. 800.)

(716.)  
Entry of sum-  
mons in Sum-  
mons Book.

8.—*Attendance.*

25. Where, upon the hearing of the summons to proceed, or at any time during the prosecution of the judgment or order, it appears to the Judge, with respect to the whole or any portion of the proceedings, that the interests of the parties can be classified, he may require the parties constituting each or any class to be represented by the same solicitor, and may direct what parties may attend all or any part of the proceedings, and where the parties constituting any class cannot agree upon the solicitor to represent them, the Judge may nominate such solicitor for the purpose of the proceedings before him, and where any one of the parties constituting such class declines to authorize the solicitor so nominated to act for him, and insists upon being represented by a different solicitor, such party shall personally pay the costs of his own solicitor of and relating to the proceedings before the Judge, with respect to which such nomination shall have been made, and all such further

(717.)  
One solicitor  
for each class.

**Order LV.** costs as shall be occasioned to any of the parties by his being  
**rr. 26—82.** represented by a different solicitor from the solicitor so to  
 be nominated. (E. 802.)

(718.)  
 Distinct solici-  
 tors may be  
 required.

26. Whenever in any proceedings before a Judge in Chambers the same solicitor is employed for two or more parties, such Judge may at his discretion require that any of the said parties shall be represented before him by a distinct solicitor, and adjourn such proceedings until such party is so represented. (E. 803.)

(719.)  
 Those not direct-  
 ed may attend at  
 their own ex-  
 pense.

27. Any of the parties other than those who shall have been directed to attend may attend at their own expense, and upon paying the costs, if any, occasioned by such attendance, or, if they think fit, they may apply by summons for liberty to attend at the expense of the estate, or to have the conduct of the action, either in addition to or in substitution for any of the parties who shall have been directed to attend. (E. 804.)

(720.)  
 How order  
 drawn up.

28. An order is to be drawn up on a summons to be taken out by the plaintiff or the party having the conduct of the action, stating the parties who shall have been directed to attend and such of them (if any) as shall have elected to attend at their own expense. (E. 805.)

### 9.—Advertisements for Creditors and Claimants.

(721.)  
 Those who do  
 not come in after  
 advertisement,  
 excluded.

29. Where a judgment or order is given or made, whether in Court or in Chambers, directing an account of debts, claims, or liabilities, or an inquiry for heirs, next of kin, or other unascertained persons, unless otherwise ordered, all persons who do not come in and prove their claims within the time which may be fixed for that purpose by advertisement, shall be excluded from the benefit of the judgment or order. (E. 806.)

(722.)  
 Peremptory ad-  
 vertisement.

30. Where an advertisement is required for the purpose of any proceeding in Chambers, a peremptory advertisement, and only one, shall be issued, unless for any special reason it may be thought necessary to issue a second advertisement or further advertisements, and any advertisement may be repeated as many times and in such papers as may be directed. (E. 807.)

(723.)  
 How prepared.

31. The advertisement shall be prepared by the party prosecuting the judgment or order, and submitted to the Judge for approval. (E. 808.)

(724.)  
 Advertisement,  
 form and con-  
 tents of.

32. Advertisements for creditors and other claimants shall fix a time within which each claimant, not being a creditor, is to come in and prove his claim, and within which each creditor is to send to the executor or administrator of the deceased, or to such other party as the Judge

shall direct, or to his solicitor, to be named and described in the advertisement, the name and address of such creditor and the full particulars of his claim, and a statement of his account and the nature of the security (if any) held by him. Such advertisements shall be in one of the Forms Nos. 2 and 3, in Appendix L., with such variations as the circumstance of the case may require. At the time of directing such advertisement a time shall be fixed for adjudicating on the claims. (E. 809.)

Order LV.  
rr. 33—37.

33. No creditor need make any affidavit or attend in support of his claim (except to produce his security), unless he is served with a notice requiring him to do so as hereinafter provided. (E. 811.)

(725.)  
Proof of claim  
by creditors.

34. Every creditor shall produce the security (if any) held by him, before the Judge, at such time as shall be specified in the advertisement for that purpose, being the time appointed for adjudicating on the claims, and every creditor shall, if required, by notice in writing (Form No. 4 in Appendix L.) to be given by the executor or administrator of the deceased, or by such other party as the Judge shall direct, produce all other deeds and documents necessary to substantiate his claim before the Judge at his Chambers at such time as shall be specified in such notice. (E. 812.)

(726.)  
Creditor to pro-  
duce security

35. In case any creditor shall neglect or refuse to comply with the last preceding Rule, he shall not be allowed any costs of proving his claim unless the Judge shall otherwise direct. (E. 813.)

(727.)  
Penalty for non-  
compliance.

36. The executor or administrator of the deceased, or such other party as the Judge shall direct, shall examine the claims of creditors sent in pursuant to the advertisement, and shall ascertain, as far as he is able, to which of such claims the estate of the deceased is justly liable, and he shall, at least seven clear days prior to the time appointed for adjudication, file an affidavit (Form No. 5 in Appendix L.) to be made by such executor or administrator, or one of the executors or administrators, or such other party, either alone or jointly with his solicitor or other competent person, or otherwise, as the Judge shall direct, verifying a list of the claims (Forms No. 6 in Appendix L.) the particulars of which have been sent in pursuant to the advertisement, and stating to which of such claims, or parts thereof respectively, the estate of the deceased is in the opinion of the deponent justly liable, and his belief that such claims, or parts thereof respectively, are justly due and proper to be allowed, and the reasons for such belief. (E. 814.)

(728.)  
Executor or ad-  
ministrator to  
examine claims.

37. In case the Judge shall think fit so to direct, the making of the affidavit referred to in the last preceding

(729.)  
Making of affida-  
vits may be post-  
poned.

Order IV.  
r r. 38—42.

Rule shall be postponed till after the day appointed for adjudication, and shall then be subject to such directions as the Judge may give. (E. 815.)

(730.)  
Adjournment  
for directions.

38. Where, on the day appointed for hearing the claims, any of them remain undisposed of, an adjournment day for hearing such claims shall be fixed, and where further evidence is to be adduced, a time may be named within which the evidence on both sides is to be closed, and directions may be given as to the mode in which such evidence is to be adduced. (E. 816.)

(731.)  
Allowance or dis-  
allowance of  
claims.

39. At the time appointed for adjudicating upon the claims of creditors, or at any adjournment thereof, the Judge may in his discretion allow any of the claims, or any part thereof respectively, without proof by the creditors, and direct such investigation of all or any of the claims not allowed, and require such further particulars, information, or evidence relating thereto as he may think fit, and may, if he think fit, require any creditor to attend and prove his claim, or any part thereof, and the adjudication on such claims as are not then allowed shall be adjourned to a time to be then fixed. (E. 817.)

(732.)  
Notices to credi-  
tors.

40. Notice (Form No. 7, in Appendix L.) shall be given by the executor or administrator, or such other party as the Judge shall direct, to every creditor whose claim, or any part thereof, has been allowed without proof by the creditor, of such allowance, and to every such creditor as the Judge shall direct to attend and prove his claim, or such part thereof as is not allowed, by a time to be named in such notice (Form No. 8, in Appendix L.), not being less than seven days after such notice, and to attend at a time to be therein named, being the time to which the adjudication thereon shall have been adjourned, and in case any creditor shall not comply with such notice, his claim, or such part thereof as aforesaid, shall be disallowed. (E. 818.)

(733.)  
Exclusion of  
claims after pre-  
scribed time.

41. After the time fixed by the advertisement no claims shall be received (except as hereinbefore provided in case of an adjournment), unless the Judge shall see fit to give special leave, upon application made by summons, and then upon such terms and conditions as to costs and otherwise as the Judge shall think fit. (E. 819.)

(734.)  
Costs to creditors  
proving claim.

42. A creditor who has come in and established his debt in Chambers under any judgment or order shall be entitled to the costs of so establishing his debt, and the sum to be allowed for such costs shall be fixed by the Judge, unless he shall think fit to direct the taxation thereof; and the amount of such costs, or the sum allowed

in respect thereof, shall be added to the debt so established. (E. 820.)

Order LV.  
r r. 43-48.

43. A list of all claims allowed shall, when required by the Judge, be made out and filed by the person who examines the claims. (E. 821.)

(735.)  
List of allowed claims.

44. Every notice by this Order required to be given to creditors or other claimants shall, unless the Judge shall otherwise direct, be deemed sufficiently given and served if transmitted by the post prepaid to the creditor or other claimant to be served according to the address given in the claim sent in by him pursuant to the advertisement, or in case such creditor or other claimant shall have employed a solicitor, to such solicitor according to the address given by him. (E. 823.)

(736.)  
Service of notices by post.

10.—Interest.

45. Where a judgment or order is made directing an account of the debts of a deceased person, unless otherwise ordered, interest shall be computed on such debts as to such of them as carry interest after the rate they respectively carry, and as to all others after the rate of six per cent. per annum from the date of the judgment or order. (E. 824.)

(737.)  
Interest on judgment or order.

46. A creditor whose debt does not carry interest, who comes in and establishes the same before the Judge in Chambers under a judgment or order of the Court or of the Judge in Chambers, shall be entitled to interest upon his debt at the rate of six per cent. per annum, from the date of the judgment or order, out of any assets which may remain after satisfying the costs of the cause or matter, the debts established, and the interest of such debts as by law carry interest. (E. 825.)

(738.)  
Interest where debt does not bear interest.

47. Where a judgment or order is made directing an account of legacies, interest shall be computed on such legacies after the rate of five per cent. per annum from the end of one year after the testator's death, unless otherwise ordered, or unless any other time of payment or rate of interest is directed by the will, and in that case according to the will. (E. 826.)

(739.)  
Interest on legacies.

11.—Further Consideration.

48. Where any matter originating in Chambers shall, at the original or any subsequent hearing, have been adjourned for further consideration in Chambers, such matter may, after the expiration of eight days, be brought on for further consideration by a summons to be taken out by the party having the conduct of the matter, and, after the expiration of fourteen days, by a summons to be taken

(740.)  
Adjourned matter, how brought forward.



Order LV.  
r. 49. out by any other party. Such summons shall be in the form following:—

“That this matter, the further consideration whereof was adjourned by the order of the — day of —, 18—, may be further considered,” and shall be served six clear days before the return. Provided that this Rule shall not apply to any matter, the further consideration whereof shall, at the original or any subsequent hearing, have been adjourned into Court. (E. 834.)

12.—Forms, &c.

(741.)  
Forms. 49. The Forms Nos. 10 to 20 in Appendix L. shall be used for the respective purposes therein mentioned, with such variations as circumstances may require. (E. 837.)

Order LVI.  
rr 1, 2.

ORDER LVI.

INTERPLEADER.

1. Relief by way of interpleader may be granted,—

(742.)  
When such relief  
allowed.

(a.) Where the person seeking relief (in this Order called the applicant) is under liability for any debt, money, goods, or chattels, for or in respect of which he is, or expects to be, sued by two or more parties (in this Order called the claimants) making adverse claims thereto;

Sheriff.

(b.) Where the applicant is a Sheriff or other officer charged with the execution of process by or under the authority of the Court, and claim is made to any money, goods or chattels taken or intended to be taken in execution under any process, or to the proceeds or value of any such goods or chattels by any person other than the person against whom the process issued. (E. 850.)

(743.)  
Conditions of  
relief.

2. The applicant must satisfy the Court or a Judge by affidavit or otherwise—

(a.) That the applicant claims no interest in the subject-matter in dispute, other than for charges or costs; and

(b.) That the applicant does not collude with any of the claimants; and

(c.) That the applicant is willing to pay or transfer the subject-matter into Court or to dispose of it as the Court or a Judge may direct. (E. 851.)

3. The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin but are adverse to and independent of one another. (E. 852.)

Order LVI.  
rr. 3—11.  
(744.)  
Adverse titles of claimants.

4. Where the applicant is a defendant, application for relief may be made at any time after service of the writ of summons. (E. 853.)

(745.)  
Time for application by defendant.

5. The applicant may take out a summons calling on the claimants to appear and state the nature and particulars of their claims, and either to maintain or relinquish them. (E. 854.)

(746.)  
Interpleader summons.

6. If the application is made by a defendant in an action the Court or Judge may stay all further proceedings in the action. (E. 855.)

(747.)  
Power to stay proceedings.

7. If the claimants appear in pursuance of the summons, the Court or a Judge may order either that any claimant be made a defendant in any action already commenced in respect of the subject-matter in dispute in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants is to be plaintiff, and which defendant. (E. 856.)

(748.)  
Direction of issue, or that claimant be made defendant.

8. The Court or a Judge may, with the consent of both claimants or on the request of any claimant, if, having regard to the value of the subject-matter in dispute, it seems desirable so to do, dispose of the merits of their claims, and decide the same in a summary manner and on such terms as may be just. (E. 857.)

(749.)  
Summary adjudication by consent.

9. Where the question is a question of law, and the facts are not in dispute, the Court or a Judge may either decide the question without directing the trial of an issue, or order that a special case be stated for the opinion of the Court. If a special case is stated, Order XXXIII. shall, as far as applicable, apply thereto. (E. 858.)

(750.)  
Questions of law, and special cases

10. If a claimant, having been duly served with a summons calling on him to appear and maintain or relinquish his claim, does not appear in pursuance of the summons, or, having appeared, neglects or refuses to comply with any order made after his appearance, the Court or a Judge may make an order declaring him, and all persons claiming under him, forever barred against the applicant and persons claiming under him; but the order shall not affect the rights of the claimants as between themselves. (E. 859.)

(751.)  
Claimant not appearing, to be barred.

11. Except where otherwise provided by statute, the judgment in any action, or on any issue ordered to be tried or stated in an interpleader proceeding, and the decision of the Court or a Judge in a summary way, under Rule 8 of

(752.)  
Decision when final.

**Order LVI.**  
**rr. 12—15.**

this Order, shall be final and conclusive against the claimants, and all persons claiming under them, unless by special leave of the Court or Judge, as the case may be. (E. 860.)

(753.)  
Sale may be ordered.

12. When goods or chattels have been seized in execution by a sheriff or other officer charged with the execution of process of the Court, and any claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by way of security for debt, the Court or a Judge may order the sale of the whole or a part thereof, and direct the application of the proceeds of the sale in such manner and upon such terms as may be just. (E. 861.)

(754.)  
Discovery, trial, and judgment.

13. Orders XXX. and XXXIV. shall, with the necessary modifications, apply to an interpleader issue; and the Court or Judge who tries the issue may finally dispose of the whole matter of the interpleader proceedings, including all costs not otherwise provided for. (E. 862.)

(755.)  
One order in several matters.

14. Where in any interpleader proceeding it is necessary or expedient to make one order in several causes or matters, such order may be made by the Court or a Judge before whom the interpleader proceedings may be taken, and shall be intituled in all such causes or matters; and any such order (subject to the right of appeal) shall be binding on the parties in all such causes or matters. (E. 863.)

(756.)  
Costs and incidental matters.

15. The Court or a Judge may, in or for the purposes of any interpleader proceedings, make all such orders as to costs and all other matters as may be just and reasonable. (E. 864.)

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**ORDER LVII.**

APPEALS, ETC.

**Order LVII.**  
**rr. 1, 2.**

(757.)  
Appeals to be by re-hearing and after notice of motion.

1. All appeals to the Court shall be by way of re-hearing, and shall be brought by notice of motion in a summary way, and no petition, case, or other formal proceeding other than such notice of motion shall be necessary. The appellant may, by the notice of motion, appeal from the whole, or any part of any judgment or order, and the notice of motion shall state whether the whole or part only of such judgment or order is complained of, and in the latter case shall specify such part. (E. 865.)

(758.)  
Notice, on whom to be served.

2. The notice of appeal shall be served on all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Court may direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not a

party, and in the meantime may postpone or adjourn the hearing of the appeal, upon such terms as may be just, and may give such judgment, and make such order as might have been given or made if the persons served with such notice had been original parties. Any notice of appeal may be amended at any time, as the Court may think fit. (E. 866.)

Order LVII.  
rr. 3-7.

3. The notice of appeal shall be served within ten days from the day when the judgment, decision or order appealed from was pronounced, or when the appellant or his solicitor first had notice thereof, but the Court or a Judge may enlarge and extend the time for giving such notice, either before or after the expiration thereof.

(759.)  
When notice to be given.

4. Every judgment, rule, order, or decision made by a Judge, in Court, or in Chambers, except orders made in the exercise of such discretion as by law belongs to him, may be set aside or discharged, upon notice, by the Court.

(760.)  
Subjects of appeal.

5. On appeal, the Court shall have, in addition to all the powers and duties as to amendment, full discretionary power to receive further evidence on questions of fact, such evidence to be taken by oral examination in Court, by affidavit, or by deposition taken before an examiner or commissioner. Such further evidence may be given without special leave, on interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. On appeals from a judgment after trial or hearing of any cause or matter on the merits, such further evidence (save as to matters subsequent as aforesaid) shall be admitted on special grounds only, and not without special leave of the Court. The Court shall have power to draw inferences of fact, and to give any judgment and make any order which ought to have been made, and to make such further or other order as the case may require. The powers aforesaid may be exercised by the Court, notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such powers may also be exercised in favor of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision. The Court shall have power to make such order as to the whole or any part of the costs of the appeal as may be just. (E. 868.)

(761.)  
Powers of Court on appeal, as to further evidence, inferences, &c.

6. If upon the hearing of an appeal, it shall appear to the Court that a new trial ought to be had, it shall be lawful for the Court to order that the verdict and judgment be set aside, and that a new trial be had. (E. 869.)

(762.)  
New trial may be ordered.

7. It shall not, under any circumstances, be necessary for a respondent to give notice of motion by way of cross-

(763.)  
Cross-appals.

Order LVII.  
r. r. 8—13.

appeal, but if a respondent intends, on the hearing of the appeal, to contend that the decision of the Court or Judge below should be varied, he shall within the time specified in the next Rule, or such time as may be prescribed by special order, give notice of such intention to any parties who may be affected by such contention. The omission to give such notice shall not diminish the powers of the Court, but may, in the discretion of the Court, be ground for an adjournment of the appeal, or for a special order as to costs. (E. 870.)

(764.)  
Notice of cross-  
appeal.

8. Subject to any special order which may be made, notice by a respondent under the last preceding Rule shall in the case of any appeal from a final judgment be an eight days' notice, and in the case of an appeal from an interlocutory order, a two days' notice. (E. 871.)

(765.)  
Entry of appeal.

9. The party appealing shall leave with the Prothonotary at Halifax a copy of the notice of appeal to be filed, when the appeal is entered for argument.

(766.)  
*Ex parte* appli-  
cations.

10. When an *ex parte* application has been refused by a Judge, an application for a similar purpose may be made to the Court *ex parte* within four days from the commencement of the next session of the Court thereafter, or within such other time as the Court or a Judge may allow. (E. 874.)

(767.)  
Evidence, how  
brought up.

11. When any question of fact is involved in an appeal or application for a new trial, the evidence taken in the Court below, or by the Judge appealed from, bearing on such question, shall, subject to any special order, be brought before the Court as follows :—

(a.) As to any evidence taken by affidavit, by the production of the printed copies of such affidavits ;

(b.) As to any evidence given orally, by the production of copies of the Judge's notes, or such other material as the Court may deem expedient. (E. 875.)

(768.)  
Court not barred  
by interlocutory  
order not appeal-  
ed from.

12. No interlocutory order or rule from which there has been no appeal, shall operate so as to bar or prejudice the Court from giving such decision on the appeal, as may be just. (E. 878.)

(769.)  
Appeal not a stay  
of proceedings.

13. An appeal shall not operate as a stay of execution, or of proceedings under the decision appealed from, except so far as the Judge appealed from, or the Court, may order ; and no intermediate act or proceeding shall be invalidated, except so far as the Court may direct. Such deposit or other security shall be made or given as may be directed by the Court or a Judge. (E. 880.)

14. Interest for such time as execution has been delayed by the appeal, shall be allowed at the rate of six per cent., unless the Court or a Judge otherwise orders, and such interest shall be added to the judgment without any order for that purpose. (E. 883.)

Order LVII.  
rr. 14-17.  
(770.)  
Interest to be allowed where execution stayed.

15. Where any application ought to be made to, or any jurisdiction exercised or any act done by, the Judge by whom a cause or matter has been tried or heard, if such Judge die or cease to be a Judge of the Court, or if for any other reason it shall be impossible or inconvenient that such Judge should act in the matter, the Chief Justice may, either by a special order in any cause or matter, or by a general order applicable to any class of causes or matters, nominate some other Judge to whom such application may be made, and by whom such jurisdiction may be exercised. (E. 885.)

(771.)  
Substitution of Judge.

16. Where a compulsory reference to arbitration has been ordered, any party to such reference, may appeal from the award or certificate of the arbitrator or referee upon any question of law; and on the application of any party the Court may set aside the award on any ground on which the Court might set aside the verdict of a jury. Such appeal shall be to the Court, who shall have power to set aside the award or certificate, or to remit all or any part of the matters in dispute to the arbitrator or referee, or to make any order with respect to the award or certificate or all or any of the matters in dispute that may be just. (E. 886.)

(772.)  
Appeal from referee, &c.

17. Rules 1, 2, 3, 4, 5, 6, 9, 10, 11, and 13 of this Order shall only apply to appeals in causes or matters originating in the Supreme Court.

(773.)  
Limitation of certain Rules.

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ORDER LVIII.

SESSIONS, SITTINGS, VACATIONS, ETC.

Order LVIII.  
rr. 1-2.

1. The Court shall be always open, and shall sit at Halifax at such times as the business requires and as the attendance of a quorum of the Judges can be obtained. (C. 2 of 1882, sec. 13.)

(774.)  
The Court always open.

2. An annual session of the Court shall be held, beginning on the second Tuesday of December and continuing to the first Tuesday of April, with the exception of a vacation from the Saturday before Christmas to the Monday after the first day of January, exclusive of both days named. The session may be continued beyond the first Tuesday of

(775.)  
Annual session at Halifax.

**Order LVIII.** April. In case, at any time during said session, there shall be no business before the Court, and when a recess may be necessary for the preparation of judgments, an adjournment for a short period may be ordered by the Court. (C. 13 of 1880, secs. 2 and 5.)

(776.)  
Subsequent session for unfinished causes.

3. In case any business remains undisposed of at the end of the annual session, one session or more shall be subsequently held before the next annual session, for the disposal of such business as may be ready. (C. 13 of 1880, sec. 6.)

(777.)  
Quorum.

4. Four Judges shall constitute a quorum to decide all matters requiring to be heard by the Court (in banc), but if the attendance of four judges at any time cannot be obtained owing to absence, illness, or other cause sufficient in the estimation of the Judges present, three shall constitute such quorum.

(778.)  
Entries of causes for argument.

5. Causes and matters for argument at the annual session, shall be entered with the Prothonotary not later than the first Tuesday of December, and every Tuesday during the session shall be a day for entering causes and matters subsequently coming up for argument. (C. 13 of 1880, sec. 3.)

(779.)  
Consequence of not entering cause.

6. A judgment, order, decision, rule, or verdict appealed from, or sought to be set aside, shall stand as if no notice of appeal, or notice of motion to set the same aside, had been made or given, if the cause or matter in which the same was made or given be not entered for argument on the first entry day after such notice, or if the motion of which such notice has been given be not made when the cause or matter is called, unless such default in the moving party be waived by the other parties interested, or unless the Court shall otherwise order.

(780.)  
Printing.

7. (1.) All evidence and documents to be used at the argument shall be printed in demi-quarto form, on paper of good quality, and on one side of the paper only, and the type shall be small pica leaded, and the size of each page shall be eleven inches by eight and one half inches, and every tenth line shall be numbered in the margin throughout. An index to all the principal matters contained in the printed case shall be added.

(2.) In appeals the case shall be printed by the appellant; in cases stated, by the plaintiff; and in all other matters and causes, by the party who has given the notice of motion or has otherwise the carriage of the proceedings. Affidavits shall be printed by the party who desires to use them.

(3.) The party whose duty it may be to have the case printed, shall prepare the matter which in his opinion should form the case, and shall give to the opposite party's

agent, solicitor, or counsel, twenty-four hours' notice that the same may be inspected at a time and place to be named in the notice. If no agreement be come to as to what should be printed, the case shall be settled by a Judge after twenty-four hours' notice of the application. Abstracts may be used by consent or by order of a Judge, but the Court may refer, or allow either party to refer, to the full text of the matters or documents of which such abstracts have been made, or may order any further printing to be done.

Order LVIII.  
r. 8.

(4.) The party whose duty it may be to have the case printed, shall be furnished by the opposite party with copies of all exhibits and other documents in the possession or under the control of the latter, which are to form part of the case; and in default of the same being so furnished, within forty-eight hours after demand made, the party failing to do so, shall, at his own expense, cause such exhibits or documents to be printed for the argument.

(5.) Minutes of trial may be furnished to either party (by consent of both) by the Judge who has tried the cause, instead of being filed.

(6.) Eight printed copies of the case shall be deposited with the Prothonotary for the use of the Judges, officers of the Court, and reporter, and three copies shall be delivered to the agent, counsel, or attorney of the opposite party, as soon as the case is printed.

(7.) The Court or a Judge may dispense with the printing of any matter on reasonable cause being shown by affidavit, and the Court may postpone any argument from time to time, on cause shown, to enable the printing to be completed or otherwise.

(8.) In this Rule the term "case" shall be held to include the appeal papers, rules, minutes of evidence, statement of case, affidavits, report of trial, exhibits, and all other matters on which any argument is to be proceeded with. (Rules, Nov. 24, 1880.)

8 There shall be two regular sittings of the Court in Halifax, in each year, for the trial of civil causes, one to commence on the third Tuesday of April, and the other to commence on the fourth Tuesday of October. Such sittings shall continue until all the causes for trial are disposed of. During these sittings trials may be proceeded with simultaneously in different Court Rooms, and the docket may be divided, or the causes called, in such way as the Court shall direct, so as to ensure, as far as possible, each cause being tried according to its seniority. The sittings may be adjourned from time to time as may be necessary. (C. 19 of 1879, sec. 2.) The Court may order an additional panel

(781.)  
Sittings in Halifax for trial of civil causes.

Additional panel



**Order LVIII.** or panels of jurors to be drawn and summoned at any time, as may be necessary. (P. A. 13.)  
rr. 9—14.

(782.)  
 Non-jury causes  
 tried at any time  
 the Judge may  
 appoint.

9. Notwithstanding the last preceding Rule, non-jury causes which may have been transferred to any Judge, either specially or by any general description, may be heard and tried at any time and place that such Judge may appoint therefor, after the close of the pleadings, due notice of trial being given in accordance with the Rules relating to notice of trial.

(783.)  
 Jury trials first.

Limited number  
 of causes called.

10. At the sittings mentioned in Rule 8, and at all sittings for the trial of causes in other counties than in Halifax as well, causes for trial by jury shall be first tried, unless the presiding Judge shall otherwise direct. No more than ten causes shall be called for trial in one Court Room in one day.

(784.)  
 Two criminal  
 sittings.

11. There shall be two sittings for criminal trials, one on the third Tuesday of March, and the other on the first Tuesday of October, in each year, to be continued until all the business is disposed of. These sittings shall be attended by the Grand Jury, and all other persons whose duty it may be to attend the sittings of the Court in connection with the criminal business thereof. (C. 19 of 1879, sec. 6.)

(785.)  
 Jurors for Hali-  
 fax sittings.

12. A panel of thirty-six petit jurors shall be drawn and summoned to attend each sittings of the Supreme Court in Halifax, and such jurors shall be and remain in attendance until dismissed by the Court. The Court may discharge the jurors at any time during the sittings, and may direct a new panel or panels to be forthwith drawn and summoned to attend for such period as the Court shall direct. The regular panels for the March and April sittings, shall be drawn during the annual session mentioned in Rule 2, and those for the October and November sittings, during the preceding sittings. (C. 19 of 1879, sec. 7.)

(786.)  
 Fines for non-  
 attendance of  
 Jurors.

13. The fine payable by each petit juror for non-attendance shall be two dollars for the first day, and for every subsequent day such sum as the Court shall direct, not exceeding twenty dollars. The fine for non-attendance of each special juror and for each grand juror shall be five dollars for the first day, and for every subsequent day such sum as the Court shall direct, not exceeding forty dollars. (C. 19 of 1879, sec. 17.)

(787.)  
 Collection of  
 fines.

14. The Prothonotary shall on each day the Court is in session, deliver to the Sheriff a warrant for the collection of all jury fines incurred the previous day, and the Sheriff shall within two days thereafter, at the opening of the Court, return such warrant with his doings thereon to the presiding Judge, and the Sheriff shall be entitled to receive,

for his services, ten per cent. of the moneys collected by him under warrant. This and the next preceding Rule shall extend to the whole Province. (C. 19 of 1879, sec. 18.)

Order LVIII.  
rr. 15-19.

15. Special juries shall be drawn, in the manner heretofore customary, without any order therefor, whenever notice shall have been given, in accordance with any of these Rules, that the cause or matter, or any issue or question therein, is to be tried by a special jury.

(788.)  
Special juries.

16. If during the spring circuits all the causes for trial on the docket at Amherst, Yarmouth, Bridgetown, Pictou, or Arichat have not been reached, the term shall be continued for the trial of said causes in each of said places until the Saturday preceding the day appointed for the opening of the first Court of the summer term on the same circuit, or until all the causes for trial on the docket have been tried; and the jury summoned and in attendance for the trial of causes at said term shall continue to be the jury for the trial of causes at the extension of said term, until a new jury has been summoned. (C. 13 of 1880, sec. 13.)

(789.)  
Spring term continued in certain counties.

17. The several Judges presiding at the term of the Court at the places in the next preceding Rule specified, if they find the term will probably be protracted over one week beyond the time now limited therefor, shall direct that an extra panel of petit jurors shall be drawn in the manner provided by law, who shall be forthwith summoned and bound to attend at such time as shall be prescribed in the order therefor and until the close of said term, or until another jury has been in like manner summoned. (C. 13 of 1880, sec. 14.)

(790.)  
Extra panel of petit jurors to be drawn.

18. At each spring term in the several counties of the Province, except the counties of Cumberland, Yarmouth, Annapolis, Pictou, and Richmond, besides the juries required to be drawn under the law in that behalf, an additional jury for each of the said counties shall be in like manner drawn for the summer terms, and writs of *venire facias* for the summoning of the said juries for said summer terms, shall be issued and delivered to the Sheriffs of the several counties in which said summer terms are to be held, who shall cause said jurors to be duly summoned, in accordance with the provisions of the law relating to the summoning of jurors; but in any county in which no summer term is to be held, in consequence of there being no causes left for trial at the spring term, no writ of *venire facias* shall be issued, but the names of the several jurors drawn for any such term shall be returned to the jury box. (C. 13 of 1880, sec. 15.)

(791.)  
Additional jurors for Summer term.

19. It shall be competent for the Judge presiding at any Court in any county to cause, at any time, a jury to be

(792.)  
Jurors drawn whenever required.

**Order LVIII.** drawn and summoned for such time as he may deem necessary, and also to discharge any jury in attendance. (C. 13 of 1880, sec. 16.)

(793)  
Court to be adjourned if Judge does not arrive.

20. In case a Judge shall be prevented from arriving at the place appointed for holding a Court, on the day fixed for holding the same, the Sheriff shall give public notice that the Court will meet on the day following, and shall continue to give such notice from day to day for three successive days, unless a Judge shall in the meantime arrive. (P. A. 24.)

(794.)  
Vacation.

21. In Halifax there shall be a vacation to extend from the fifteenth day of July to the fifteenth day of September in each year. During vacation no contested business shall be transacted except such as relates to the liberty of the subject, and neither party to a suit in which an appearance has been entered shall be compelled to deliver any pleading. If the time for delivering a defence in a cause in which the defendant has appeared has not expired previously to the sixteenth day of July, it shall, without any order to that effect, stand extended until the expiration of five days after the last day of vacation, and if any writ, defence, or other pleading be delivered during vacation the same time shall be allowed to the opposite party as if it were delivered on the last day of vacation. Nothing in this Rule contained shall prevent the issue of process, or the transaction of any business which may be done *ex parte*, or the entering of judgment by default in any suit in which no appearance is entered, nor interfere with the hearing during vacation of causes remaining undisposed of at the annual session, nor shall this Rule affect the validity of any proceedings had or taken during vacation by order of the Court or a Judge, authorizing such proceedings to be had or taken notwithstanding the vacation. (C. 13 of 1880, secs. 7 and 8.)

(795.)  
Contempt during vacation.

22. If any person commit a contempt by disobedience, during vacation, or otherwise, of the rules, order or judgment of the Court or a Judge, proceedings on such contempt, or for enforcing such rule, order, or judgment, may be had and taken, notwithstanding the provisions of the last preceding Rule in reference to vacation. (P. A. 240.)

(796.)  
Days of commencement and termination not included.

23. The days of the commencement and termination of the vacation shall not be included in the vacation.

(797.)  
Judge doing equity business exempted from circuit.

24. If the business which heretofore was transacted on the Equity side of the Supreme Court shall be transferred to any one of the Judges, he shall not be required to attend the circuits, unless the illness of a Judge, or other sufficient cause, shall render it necessary for him to do so. (S. C. A. 7.)

25. The presiding Judge may, from time to time, in his discretion, extend and adjourn any term to such period and for such time as he may deem necessary for the disposal of the causes on the docket. (P. A. 11.)

Order LVIII.  
r. 25.  
(798.)  
Judge may adjourn and extend term.

ORDER LIX.

Order LIX.  
rr. 1-7.

OFFICERS AND THEIR DOCUMENTS.

1. The official seals in use by the respective Prothonotaries on the second day of October, A. D. 1884, shall continue to be the seals used, but may be changed as the Chief Justice from time to time may direct. (E. 899.)

(799.)  
Seals.

2. All copies, certificates, and other documents appearing to be sealed with a seal of the Court, used by the Prothonotary, shall be presumed to be authenticated copies or certificates or other documents issued by the Prothonotary, and may be received in evidence, and no signature or other formality, except the sealing with the Prothonotary's seal, shall be required for the authentication of any such copy, certificate, or other document. (E. 900.)

(800.)  
Authenticating documents.

3. It shall not be necessary to enrol any judgment or order, whether dated before or since the commencement of the first day of October, A. D. 1884. (E. 901.)

(801.)  
Enrolment not necessary.

4. Proper indexes or calendars to the files or bundles of all documents filed, shall be kept, so that the same may be conveniently referred to when required, and such indexes or calendars and documents shall, at all times during office hours, be accessible to the public on payment of the proper fee. (E. 910.)

(802.)  
Indexes, &c.

5. There shall also be entered in proper books kept for the purpose, the time of delivery of every document filed in the Prothonotary's office, and such books shall at all times during office hours be accessible to the public on payment of the proper fee. (E. 911.)

(803.)  
Books to be kept at Prothonotary's office and entries therein.

6. Every judgment, order, certificate, petition or document, made, presented, or used in any cause or matter, shall be distinguished by having plainly written or stamped thereon the year, the letter and the number by which the cause or matter is distinguished in the books kept in the Prothonotary's office. (E. 912.)

(804.)  
Documents numbered and dated.

7. There shall also be entered in the Cause Book, the date of every judgment, order, and certificate made in every cause or matter. (E. 913.)

(805.)  
Entry of dates in Cause Book.

- Order LIX.**  
**r. r. 8—14.**
- (806.)  
Certificate of proceedings to be given.
8. For the purpose of enabling all persons to obtain precise information as to the state of any cause or matter, and to take the means of preventing improper delay in the progress thereof, the Prothonotary shall, at the request of any person, whether a party or not to the cause or matter inquired after, but on payment of the proper fee, give a certificate specifying therein the dates and general description of the several proceedings which have been taken in the cause or matter. (E. 917.)
- (807.)  
Filed papers not to be taken away
9. No affidavit or document filed at the Prothonotary's office shall be taken therefrom without the order of a Judge, and no *subpœna* for the production of any such document shall be issued. (E. 921.)
- (808.)  
Forms.
10. The forms contained in the Appendices shall be used in or for the purposes of the Prothonotary's office, with such variations as circumstances may require. (E. 925.)
- (809.)  
Clerks of Crown.
11. The Prothonotaries shall continue to perform all the duties which appertained to Clerks of the Crown. (S. C. A. sec. 10)
- (810.)  
Statement of fines.
12. On the first day of each term or sittings the Prothonotary shall deliver in open Court a correct statement of the fines imposed at the preceding term or sittings, together with a statement of all such as have been collected since the preceding term or sittings. (S. C. A. sec. 11.)
- (811.)  
Securities.
13. Any obligation or security which heretofore has been, or hereafter may be, ordered by the Court or a Judge to be made to the Prothonotary as the obligee thereof, may be enforced by action at law, and in the name of any succeeding Prothonotary, or of any other such officer, under an order of the Court or a Judge, and such order may prevent the commencement or continuance of any action on any such security by or in the name of the original obligee or his representatives. (S. C. A. sec. 17.)
- (812.)  
Prothonotary shall keep lists of warrants of attorney.
14. The Prothonotary in each county shall keep a book, wherein he shall cause to be fairly entered an alphabetical list of every warrant of attorney or cognovit actionem filed in his office, on which judgment shall not be immediately entered up, containing the names, additions and descriptions of the respective defendants or persons giving such warrants of attorney or cognovits, and also the names, descriptions and additions of the plaintiffs or persons in whose favor the same shall have been given, together with the number and dates of the execution and filing of the same, and also all other particulars connected with such warrants or cognovits; which book, and every warrant or cognovit so filed, may be searched and viewed

by any person during office hours on a fee of twenty cents for each search; and the Prothonotary shall also be entitled to receive from the party filing each warrant or cognovit, the sum of twenty cents for entering the same. (S. C. A. sec. 18.)

Order LIX.  
r. r. 16-17.

15. The Prothonotary at Halifax shall keep a book wherein shall be entered any judgment given which appertains to any other county, which book shall be signed in the usual manner; and the Prothonotary shall forthwith transmit to the Prothonotary of the county in which such judgment is required to be entered, a correct transcript of the docket of judgment; and the Prothonotary to whom the same may be transmitted shall copy such judgment into the county judgment book, and file the transcript with the papers in the cause; and the entry so made from the transcript shall have the like effect as if the same had been signed by a Judge in the judgment book into which it shall be so copied. The postage on the transmitting of any such papers shall be taxed as costs in the cause. (S. C. A., sec. 19.)

(813.)  
Prothonotary at Halifax to keep list of country judgments, &c.

16. The Prothonotary of every county shall, whenever required, furnish to the solicitors or parties requiring the same, a bill of the items of his own, the crier's and constable's fees, under penalty of twenty dollars; and nothing shall be taxed for such fees if the demand be made and not complied with before taxation of the costs in the cause. (S. C. A., sec. 20.)

(814.)  
Prothonotary to furnish bill of items, when required.

17. The commissioners for taking affidavits to hold to bail and recognizances of bail, appointed and hereafter to be appointed by the Governor-in-Council, shall continue to have authority to allow writs of *certiorari* and to order such writs to issue, and to indorse the same, when no Judge shall be in the county where the proceedings for such *certiorari* are taken. They shall also have authority to administer oaths, and to take affidavits in causes and matters relating to the Court and its proceedings, and also to take the examination of witnesses aged, infirm, or about to leave the Province. (C. 1 of 1874, sec. 1, and C. 2 of 1882, sec. 10.)

(815.)  
Commissioners allowing *certiorari*.

**Order LX.**  
rr. 1-7.

**ORDER LX.**

TIME.

(816.)  
"Month" means  
calendar month.

1. Where by these Rules, or by any judgment or order given or made after the commencement of the first day of October, A.D., 1884, time for doing any act or taking any proceeding is limited by months, and where the word "month" occurs in any document which is part of any legal procedure under these Rules, such time shall be computed by calendar months, unless otherwise expressed. (E. 961.)

(817.)  
Sunday, &c., not  
counted in cer-  
tain cases.

2. Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, Sunday, Christmas Day, and Good Friday shall not be reckoned in the computation of such limited time. (E. 962.)

(818.)  
Expiration of  
time on Sunday.

3. Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the Prothonotary's office is closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open. (E. 963.)

(819.)  
Computing time  
for security for  
costs.

4. The day on which an order for security for costs is served, and the time thenceforward until and including the day on which such security is given, shall not be reckoned in the computation of time allowed to plead, answer interrogatories, or take any other proceeding in the cause or matter. (E. 966.)

(820.)  
Power to enlarge  
or abridge time.

5. The Court or a Judge shall have power to enlarge or abridge the time appointed by these Rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed. (E. 967.)

(821.)  
Enlargement by  
consent.

6. The time for delivering, amending, or filing any pleading, answer, or other document may be enlarged by consent in writing, without application to the Court or a Judge. (E. 968.)

(822.)  
Hours for ser-  
vice.

7. Service of pleadings, notices, summonses, orders, rules, and other proceeding, shall be effected before the hour of six in the afternoon, except on Saturdays, when it shall be effected before the hour of two in the afternoon. Service effected after six in the afternoon on any week day except Saturday shall, for the purpose of computing any period of

time subsequent to such service, be deemed to have been effected on the following day. Service effected after two in the afternoon on Saturday shall for the like purpose be deemed to have been effected on the following Monday. (E. 971.)

Order LX.  
rr. 8-9.

8. In any case in which any particular number of days, not expressed to be clear days, is prescribed, the same shall be reckoned exclusively of the first day and inclusively of the last day. (E. 972.)

(823.)  
Computing time by days.

9. In any cause or matter in which there has been no proceeding for one year from the last proceeding had, the party who desires to proceed shall give a month's notice to the other party of his intention to proceed. A summons on which no order has been made shall not, but notice of trial although countermanded shall, be deemed a proceeding within this Rule. (E. 973.)

(824.)  
Proceedings after lapse of a year.

ORDER LXI.

Order LXI.

ASSIGNMENT OF CHOSSES IN ACTION

Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Rule had not been made), to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same and the power to give a good discharge for the same, without the concurrence of the assignor. (Imp. Jud. Act, 1873, sec. 25, sub-sec. 6.)

(825.)  
Assignment conveys right to sue.

ORDER LXII.

Order LXII.

ASSIGNMENT OF SECURITIES TO SURETY, ETC.

Every person who, being surety for the debt or duty of another, or being liable with another for any debt or duty, shall pay such debt or perform such duty, shall be entitled to have assigned to him or to a trustee for him,

(826.)  
When surety pays debt creditors must assign securities held in respect thereof.



**Order LXII.** every judgment, specialty, or other security which shall be held by the creditor in respect of such debt or duty, whether such judgment, specialty, or other security, shall or shall not be deemed at law to have been satisfied by the payment of the debt or performance of the duty; and such person shall be entitled to stand in the place of the creditor, and to use all the remedies, and, if need be, and upon a proper indemnity, to use the name, of the creditor in any action or other proceeding at law or in equity, in order to obtain from the principal debtor, or any co-surety, or co-contractor, or co-debtor, as the case may be, indemnification for the advances made and the loss sustained by the person who shall have so paid such debt or performed such duty; and such payment or performance so made by such surety shall not be pleadable in bar of any such action or other proceeding by him: Provided always, that no co-surety, co-contractor, or co-debtor shall be entitled to recover from any other co-surety, co-contractor, or co-debtor, by the means aforesaid, more than the just proportion to which, as between those parties themselves, such last mentioned person shall be justly liable. (P. A. 370.)

**Order LXIII.**  
**rr. 1-3.**

**ORDER LXIII.**

**COSTS.**

- (827.)  
Costs discretionary.
- Trustees, mortgagees, &c.
- Jury cases.
- (828.)  
Costs on several issues.
- (829.)  
Costs in causes removed from inferior Court.
1. Subject to the provisions of the Act and these Rules, the costs of and incident to all proceedings in the Supreme Court, including the administration of estates and trusts, shall be in the discretion of the Court or Judge: Provided that nothing herein contained shall deprive an executor, administrator, trustee, or mortgagee who has not unreasonably instituted or carried on or resisted any proceedings, of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon in equity: Provided also that, where any action, cause, matter, or issue is tried with a jury, the costs shall follow the event, unless the Judge by whom such action, cause, matter or issue is tried, or the Court, shall, for good cause, otherwise order. (E. 976.)
  2. When issues in fact and law are raised upon a claim or counter-claim, the costs of the several issues respectively, both in law and fact, shall, unless otherwise ordered, follow the event. (E. 977.)
  3. If a cause be removed from an inferior Court having jurisdiction in the cause, the costs in the Court below shall be costs in the cause, unless the Court or a Judge shall otherwise order. (E. 978.)

4. Where upon the trial of any cause or matter it appears that the same cannot conveniently proceed by reason of the solicitor for any party having neglected to attend personally, or by some proper person on his behalf, or having omitted to deliver any paper necessary for the use of the Court or Judge, and which according to the practice ought to have been delivered, such solicitor shall personally pay to all or any of the parties such costs as the Court or Judge shall think fit to award. (E. 980)

Order LXIII.  
rr. 4-9.

(830.)  
Solicitor causing  
delay liable for  
costs.

5. When the plaintiff in any action resides out of Nova Scotia, and the defendant, by affidavit of himself or his agent, alleges that he has a good defence on the merits to the action, the defendant shall be entitled to an order requiring the plaintiff, within three months (or such other and further time as the Court or Judge may deem right) from the service of the order, to give security for the defendant's costs, and staying all further proceedings in the meantime, and directing that in default of such security being given the action be dismissed with costs, unless the Court or Judge, on special application for that purpose, shall otherwise order. (O. 431.)

(831.)  
Security for  
costs.

6. In any cause or matter in which security for costs is required, the security shall be of such amount, and be given at such times, and in such manner and form, as the Court or a Judge shall direct. (E. 981.)

(832.)  
Amount of se-  
curity for costs.

7. Where a bond is to be given as security for costs, it shall, unless the Court or a Judge shall otherwise direct, be given to the party or person requiring the security, and not to an officer of the Court. (E. 982.)

(833.)  
Bond to the  
party for secur-  
ity.

8. Where a petition in any cause or matter is served, and notice is given to the party served that in case of his appearance in Court his costs will be objected to, and accompanied by a tender of costs for perusing the same, the amount to be tendered shall be \$5. The party making such payment shall be allowed the same in his costs, provided such service was proper, but not otherwise; but this order is without prejudice to the rights of either party to costs, or to object to costs where no such tender is made, or where the Court or Judge shall consider the party entitled, notwithstanding such notice or tender, to appear in Court. (O. 434.)

(834.)  
Tender of costs,  
on service of pe-  
tition.

9. If in any case it shall appear to the Court or a Judge that costs have been improperly or without any reasonable cause incurred, or that by reason of any undue delay in proceeding under any judgment or order, or of any misconduct or default of the solicitor, any costs properly incurred have nevertheless proved fruitless to the person incurring the same, the Court or Judge may call on the solicitor of

(835.)  
Costs improperly  
incurred, &c.

**Order LXIII.** the person by whom such costs have been so incurred to show cause why such costs should not be disallowed as between the solicitor and his client, and also (if the circumstances of the case shall require) why the solicitor should not repay to his client any costs which the client may have been ordered to pay to any other person, and thereupon may make such order as the justice of the case may require. Such notice (if any) of the proceedings or order shall be given to the client, in such manner as the Court or Judge may direct. Any costs of the solicitor attending shall be paid by such parties or out of such funds as the Court or a Judge may direct. (E. 986.)

(836.)  
Costs of solicitor who is guardian *ad litem*.  
10. Where the Court or a Judge appoints one of the solicitors of the Court to be guardian *ad litem* of an infant or person of unsound mind, the Court or Judge may direct that the costs to be incurred in the performance of the duties of such office shall be borne and paid either by the parties or some one or more of the parties to the cause or matter in which such appointment is made, or out of any fund in Court in which such infant or person of unsound mind may be interested, and may give directions for the repayment or allowance of such costs as the justice and circumstances of the case may require. (E. 988.)

(837.)  
Lien for costs not to affect set-off.  
11. A set-off for damages or costs between parties may be allowed, notwithstanding the solicitor's lien for costs in the particular cause or matter in which the set-off is sought, if the Court or Judge think fit. (E. 989.)

(838.)  
Costs on award.  
12. Costs may be taxed on an award, notwithstanding the time for setting aside the award has not elapsed. (E. 990.)

(839.)  
One day's notice of taxation.  
13. Before taxing costs accruing in Halifax, one day's notice of taxing costs, together with a copy of the bill of costs shall be given by the solicitor of the party whose costs are to be taxed to the other party or his solicitor, in all cases where a notice to tax is necessary. (E. 991.)

(840.)  
No notice necessary where no appearance.  
14. Notice of taxing costs shall not be necessary in any case where the defendant has not appeared in person, or by his solicitor or guardian. (E. 992.)

(841.)  
Cases in which prothonotary may enter judgment.  
15. The Prothonotary may tax costs, and enter, sign, and date in the judgment book for the county wherein he resides, in the usual form, judgment in any undefended cause, brought for the recovery of a debt, by confession or on default, where particulars are annexed to the writ, (except in cases of foreclosure of mortgages) which shall be as valid as if signed by a Judge; but such taxation and judgment, or either of them, may be reviewed and set aside within twelve months by the Court or a Judge. If the costs be reduced on the taxation, the Prothonotary shall

minute such reduction on the margin of the docket, and the amount shall be deducted in the order for levy on the execution; or, if previously paid, may be recovered by action, as in the case of debt; and in case of any deduction being made from the amount of any bill, the costs of the review and re-taxation shall be borne by the solicitor whose bill has been so reduced. (P. A. 243.)

Order LXIII.  
r. 16—22.

16. The Prothonotary shall examine and compare all bills of costs, and ascertain that they contain no other or greater fees than are allowed by law; no allowance per folio shall be made but upon his certificate of the number of folios; and, except as in the last preceding Rule otherwise provided, before any such bill shall be charged against the plaintiff or defendant, it shall be allowed and signed by a Judge. (P. A. 244.)

(842.)  
Bills of costs to be examined by Prothonotary.

17. Any person taking other or greater fees than are by law allowed shall, for such offence, forfeit to the party aggrieved forty dollars, and also the amount of such excessive fees. (P. A. 246.)

(843.)  
Penalty for taking excessive fees.

18. When interlocutory costs shall be taxed against any party, execution may be issued for the recovery thereof. (P. A. 255.)

(844.)  
Execution for interlocutory costs.

19. Costs may be sued for and recovered as any other debts, and either party may have such costs taxed at any time before, or at the trial. Any bill duly taxed before trial shall be *prima facie* evidence that the amount allowed is the correct amount. If the taxation be contested by the party against whom such costs are sought to be recovered, the same shall be final. (P. A. 256.)

(845.)  
Costs may be sued for.

20. In actions founded on contract, in which the plaintiff recovers, by judgment or otherwise, a sum (exclusive of costs) not exceeding \$200, he shall be entitled to no more costs than he would have been entitled to had he brought his action in a County Court, unless the Court or Judge otherwise order. (E. 987.)

(846.)  
Costs limited in certain cases.

21. In causes and matters commenced on or after the second day of October, A. D. 1884, solicitors shall be entitled to charge and be allowed the fees in Appendix N., and in causes and matters pending when these Rules come into operation the scale of costs heretofore in force, or the scale in Appendix N., shall be applied, as either shall seem most applicable. (E. 983.)

(847.)  
Table of costs.

2.—*Special Allowances and General Regulations.*

22. The following special allowances and general regulations shall apply to all proceedings and all taxations in the Supreme Court:—

(848.)

- Order LXIII.** (1.) As to writs of summons requiring special indorsement, and as to special cases, pleadings, and affidavits in answer to interrogatories, and other special affidavits, and admissions under Order XXXII., Rule 4, the taxing authority may, in lieu of the allowances for instructions and preparing or drawing, and attendances, make such allowance for work, labor, and expenses in or about the preparation of such documents as in his discretion he may think fit.
- r. 22.**
- Instructions for drawing, allowance instead of. (1.) As to writs of summons requiring special indorsement, and as to special cases, pleadings, and affidavits in answer to interrogatories, and other special affidavits, and admissions under Order XXXII., Rule 4, the taxing authority may, in lieu of the allowances for instructions and preparing or drawing, and attendances, make such allowance for work, labor, and expenses in or about the preparation of such documents as in his discretion he may think fit.
- Copies allowed for. (2.) As to drawing any pleading or other document, the fees allowed shall include any copy made for the use of the solicitor, agent, or client, or for counsel to settle.
- Instructions and briefs. (3.) As to instructions to sue or defend, or the preparation of briefs, if the taxing authority shall on special grounds consider the fee provided inadequate, he may make such further allowance as he shall in his discretion consider reasonable.
- Affidavits; allowance for travel. (4.) As to affidavits, when there are several deponents to be sworn, or it is necessary for the purpose of any affidavit being sworn to go to a distance, or to employ an agent, such reasonable allowance may be made as the taxing authority in his discretion may think fit.
- Affidavits; allowance for includes attendances. (5.) The allowances for instructions and drawing an affidavit in answer to interrogatories, and other special affidavits, and attending the deponent to be sworn, include all attendances on the deponent to settle and read over.
- One solicitor for both parties. (6.) As to delivery of pleadings, services, and notices, the fees are not to be allowed when the same solicitor, or firm of solicitors, is for both parties, unless it be necessary for the purpose of making an affidavit of service.
- Perusals. (7.) As to perusals, the fees are not to apply where the same solicitor, or firm of solicitors, is for both parties.
- Separate pleadings by one solicitor. (8.) Where the same solicitor, or firm of solicitors, is employed for two or more defendants, and separate pleadings are delivered, or other proceedings had, by or for two or more such defendants separately, the taxing authority shall consider, in the taxation of such solicitor's bill of costs, either between party and party or between solicitor and client, whether such separate pleadings or other proceedings were necessary or proper, and if he is of opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed.
- Evidence. (9.) As to evidence, such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence, and the attendances of witnesses, are to be allowed.

(10.) As to agency correspondence, in country agency causes and matters, if it be shown to the satisfaction of the taxing authority that such correspondence has been special and extensive, he is to be at liberty to make such special allowance in respect thereof as in his discretion he may think proper

Order LXIII.  
r. 22.

Correspondence.

(11.) As to attendances at the Judges' Chambers, where by reason of the non-attendance of any party (unless it be considered expedient to proceed *ex parte*), or where by reason of the neglect of any party in not being prepared with any proper evidence, account or other proceeding, the attendance is adjourned without any useful progress being made, the Judge may order such an amount of costs, if any, as he shall think reasonable to be paid to the party attending by the party so absent or neglectful, or by his solicitor personally; and the party so absent or neglectful is not to be allowed any fee as against any other party, or any estate or fund in which any other party is interested.

Costs of neglect  
to attend at  
Chambers.

(12.) In a folio every figure comprised in a column, or authorized to be used, shall be counted as one word.

Folio.

(13.) Such costs of procuring the advice of counsel on the pleadings, evidence, and proceedings in any cause or matter as the taxing authority shall, in his discretion, think just and reasonable, and of procuring counsel to settle such pleadings and special affidavits as the taxing authority shall, in his discretion, think proper to be settled by counsel, are to be allowed; but as to affidavits, a separate fee is not to be allowed for each affidavit, but one fee for all the affidavits proper to be so settled, which are or ought to be filed at the same time.

Advice of coun-  
sel.

(14.) As to counsel attending at Judges' Chambers, no costs thereof shall in any case be allowed, unless the Judge deems it to be a proper case for counsel to attend.

Counsel's attend-  
ance at Cham-  
bers.

(15.) As to inspection of documents under Order XXX, Rule 15, no allowance is to be made for any notice or inspection, unless it is shown to the satisfaction of the taxing authority that there were good and sufficient reasons for giving such notice and making such inspection.

Inspection.

(16.) As to taking copies of documents in possession of another party, or extracts therefrom, under Rules of Court or any special order, the party entitled to take the copy or extract is to pay the solicitor of the party producing the document for such copy or extract as he may, by writing, require, at the rate of ten cents per folio; and if the solicitor of the party producing the document refuses or neglects to supply the same, the solicitor requiring the copy or extract is to be at liberty to make it, and the solicitor for the

Taking copies.

**Order LXIII.** party producing is not to be entitled to any fee in respect  
**r. 22.** thereof.

Improper and  
unnecessary  
costs.

(17.) The Court or Judge may, at the hearing of any cause or matter, or upon any application or proceeding in any cause or matter, in Court or at Chambers, and whether the same is objected to or not, direct the costs of any indorsement on a writ of summons, pleading, summons, affidavit, evidence, notice requiring a statement of claim, notice to produce, admit, or cross-examine witnesses, account, statement, procuring discovery by interrogatories or order, applications for time, bills of costs, service of notice of motion or summons, or other proceeding or any part thereof, which is improper, vexatious, unnecessary, or contains vexatious or unnecessary matter, or is of unnecessary length, or caused by misconduct or negligence, to be disallowed, or may request the taxing authority to look into the same and to disallow the costs thereof, or of such part thereof as he shall find to be improper, unnecessary, vexatious, or to contain unnecessary matter, or to be of unnecessary length, or caused by misconduct or negligence; and in such case the party whose costs are so disallowed shall pay the costs occasioned thereby to the other parties; and in any case where such question shall not have been raised before, and dealt with by the Court or Judge, it shall be the duty of the taxing authority to look into the same (and, as to evidence, although the same may be entered as read in any decree or order) for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially requested to do so.

Deduction for  
unnecessary  
costs caused.

(18.) In any case in which, under the last preceding regulation, or any other Rule of Court, or by the order or direction of a Court or Judge, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the taxing authority may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set-off, or may, if he shall think fit, delay the allowance of the costs such party is entitled to receive until he has paid or tendered the costs he is liable to pay; or such authority may allow or certify the costs to be paid, and direct payment thereof, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered.

Improper ap-  
pearance.

(19.) Where any party appears upon any application or proceeding in Court or Chambers, in which he is not interested, or upon which according to the practice of the Court he ought not to attend, he is not to be allowed any costs of such appearance unless the Court or a Judge shall expressly direct such costs to be allowed.

(20.) The costs of applications to extend the time for taking any proceedings shall be discretionary unless the Court or Judge shall have specially directed how the costs are to be paid or borne. The taxing authority shall not allow the costs of more than one extension of time, unless he is satisfied that such extension was necessary, and could not, with due diligence, have been avoided. The costs of a summons to extend time shall not be allowed in cases to which Rule 6 of Order LX. applies, unless the party taking out such summons has previously applied to the opposite party to consent and he has not given a consent to a sufficient extension of time, or the taxing authority shall consider there was a good reason for not making such application; and in case the taxing authority shall not allow the costs of such summons, and shall consider that the party applying ought to pay the costs of any other party occasioned thereby, he may direct such payment or deal with such costs in the manner provided by Regulation 18.

Order LXIII.  
r. 22.  
Costs of extending time.

(21.) As to costs to be paid or borne by another party, no costs are to be allowed which do not appear to have been necessary or proper for the attainment of justice, or defending the rights of the party, or which appear to have been incurred through over-caution, negligence, mistake, or merely at the desire of the party.

Unnecessary costs as between party and party disallowed.

(22.) As to any work and labor properly performed and not herein provided for, and in respect of which fees have heretofore been allowed, the same or similar fees are to be allowed for such work and labor as have heretofore been allowed.

Work and labor not provided for.

(23.) When the plaintiff is directed to pay to the defendant the costs of the cause, the costs occasioned to a defendant by any amendment of the plaintiff's pleadings shall be deemed to be part of such defendant's costs in the cause (except as to any amendment which shall appear to have been rendered necessary by the default of such defendant); but there shall be deducted from such costs any sum which may have been paid by the plaintiff according to the course of the Court at the time of any amendment.

Costs occasioned by amendment.

(24.) Where upon taxation a plaintiff who has obtained a judgment with costs is not allowed the costs of any amendment of his pleadings on the ground of the same having been unnecessary, the defendant's costs occasioned by such amendment shall be taxed, and the amount thereof deducted from the costs to be paid by the defendant to the plaintiff.

Defendant's costs where plaintiff's amendment disallowed.



**Order LXIII.** (25.) The allowances in respect of fees to conveyancing  
r. 22. counsel, and to any accountants, merchants, engineers,  
 Experts, &c. actuaries, and other scientific persons to whom any question  
 is referred, shall be regulated by the Court or Judge, whose  
 decision shall be final.

No retaining fee (26.) No retaining fee to counsel shall be allowed on  
 for counsel. taxation as between party and party.

Conferences. (27.) Fees for conferences are not to be allowed in  
 any cause or matter in addition to the solicitor's and  
 counsel's fees for drawing and settling, or perusing any  
 pleadings, affidavits, deeds, or other proceedings, or for  
 advising thereon, unless it shall appear for some special  
 reason that a conference was necessary or proper. (E. 1002.)

Costs as between (28.) Where the costs of one defendant ought to be  
 defendants. paid by another defendant, the Court may order payment  
 to be made by the one defendant to the other directly.  
 (O. Chan. Or., 319.)

**Order LXIV.**  
rr. 1, 2.

**ORDER LXIV.**

NOTICES, ETC.

(849.) 1. All notices required by these Rules shall be in  
 Notice to be in writing. writing, unless expressly authorized by the Court or a Judge  
 to be given orally. (E. 1003.)

(850.) 2. All notices given in the progress of or preparatory  
 Notices, how to be received in evidence. to a cause, shall be received in evidence on affidavits of the  
 service thereof made by the solicitors in the cause or their  
 clerks, or by any other solicitors or solicitors' clerks (when  
 such solicitors have been employed to perform some service  
 in the cause) specifying the times and mode of such service.  
 (P. A. 187.)

**Order LXV.**  
rr. 1, 2.

**ORDER LXV.**

SERVICE OF ORDERS, ETC.

(851.) 1. Except in the case of an order for attachment of the  
 Original order need not be shown except for attachment. person, it shall not be necessary to the regular service of an  
 order that the original order be shown, if an authenticated  
 copy of it be exhibited. (E. 1012).

(852.) 2. All writs, notices, pleadings, orders, summonses, and  
 Service of documents where personal service not necessary. other documents, proceedings, and written communications,  
 in respect of which personal service is not requisite, shall be

sufficiently served if left within the prescribed hours, at the address for service of the person to be served as defined by Orders IV. and XII., with any person resident at or belonging to such place. (E. 1013.)

Order LXV.  
r. 3-8.

3. Notices sent from any office of the Court may be sent by post; and the time at which the notice so posted would be delivered in the ordinary course of post shall, *prima facie*, be considered as the time of service thereof, and the posting thereof shall, *prima facie*, be a sufficient service. (E. 1014.)

(853.)  
Service by post.

4. Where no appearance has been entered for a party, or where a party or his solicitor, as the case may be, has omitted to give an address, as required by Orders IV. and XII., all writs, notices, pleadings, orders, summonses, and other documents, proceedings, and written communications in respect of which personal service is not requisite, may be served by filing them with the Prothonotary. (E. 1015.)

(854.)  
Where no appearance or no address.

5. Where personal service of any writ, notice, pleading, summons, order, or other document, proceeding, or written communication, is required by these Rules or otherwise, and it is made to appear to the Court or a Judge that prompt personal service cannot be effected, the Court or Judge may make such order for substituted or other service, or for the substitution of notice for service by letter, public advertisement, or otherwise, as may be just. (E. 1017.)

(855.)  
Constructive service.

6. Where a party after having sued or appeared in person has given notice in writing to the opposite party or his solicitor, through a solicitor, that such solicitor is authorized to act in the cause or matter on his behalf, all writs, notices, pleadings, summonses, orders, and other documents, proceedings, and written communications, which ought to be delivered or served on the party on whose behalf the notice is given, shall thereafter be delivered to or served upon such solicitor. (E. 1018.)

(856.)  
Party suing, &c., in person, afterwards employing solicitor.

7. Where a person who is not a party appears in any proceeding, either before the Court or in Chambers, service on the solicitor by whom such person appears, whether such solicitor act as principal or agent, shall be deemed good service except in matters requiring personal service. (E. 1019.)

(857.)  
Service on solicitor appearing for person not a party.

8. Affidavits of service shall state when, where and how, and by whom, such service was effected.

(858.)  
Affidavits of service, what to contain.

Order LXVI.  
r r. 1, 2.

## ORDER LXVI.

NON-APPLICATION OF RULES TO CRIMINAL AND DIVORCE PROCEEDINGS, ETC.

(859.)  
Criminal and  
Divorce proceed-  
ings excepted  
from Rules.

1. Nothing in these Rules shall affect the procedure or practice in Criminal Proceedings, or Proceedings for Divorce or other Matrimonial Causes. (E. 1026.)

(860.)  
Pleadings in  
Prohibition.

2. Where pleadings in prohibition are ordered, the pleadings and subsequent proceedings, including judgment and assessment of damages, if any, shall be, as nearly as may be, the same as in an ordinary action for damages. (E. 1028.)

Order LXVII.  
r r. 1, 2.

## ORDER LXVII.

PENDING BUSINESS.

(861.)  
At what stage  
Rules to apply.

1. With respect to business pending at the commencement of the second day of October, A. D. 1884, the procedure is to be as follows:—

The action shall be continued up to the close of the pleadings, according to the practice of the Court at the time the action was commenced, and afterwards according to the provisions of the Act and of these Rules, subject however to a direction, at the instance of either party, to proceed in whole or in part, at any stage, according to the provisions of the Act and of these Rules. (O. 493.)

(862.)  
Outstanding  
Rules.

2. Existing rules *nisi* and orders *nisi*, undisposed of, may be proceeded with under these Rules, or under the practice heretofore in force, as the Court or a Judge may order.

Order LXVIII.  
r r. 1, 2.

## ORDER LXVIII.

EFFECT OF NON-COMPLIANCE.

(863.)  
Non-compliance  
not fatal.

1. Non-compliance with any of these Rules, or with any rule of practice for the time being in force, shall not render any proceedings void, unless the Court or a Judge shall so direct, but such proceedings may be set aside, either wholly or in part, as irregular, or amended, or otherwise dealt with, in such manner and upon such terms as the Court or a Judge shall think fit. (E. 1037.)

(864.)  
Prompt applica-  
tion founded on  
irregularity.

2. No application to set aside any proceedings for irregularity shall be allowed, unless made within reasonable

time, or if the party applying has taken any fresh step after knowledge of the irregularity. (E. 1038.) Order LXVIII.  
r. r. 3, 4.

3. Where an application is made to set aside proceedings for irregularity, the several objections intended to be insisted upon shall be stated in the summons or notice of motion. (E. 1039.) (865.)  
Objections to be set out in summons or notice.

4. When a summons is taken out to set aside any process or proceeding for irregularity with costs, and the summons is dismissed generally, without any special direction as to costs, it is understood as dismissed with costs. (E. 1040.) (866.)  
Costs on dismissal of application.

ORDER LXIX.

Order LXIX.  
r. r. 1, 2.

INTERPRETATION OF TERMS.

1. The provisions of the 47th section of the Act shall apply to these Rules. (867.)  
Meaning of terms

In the construction of these Rules, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned or referred to shall have or include the meaning following:—

- “Originating Summons” means a summons by which proceedings are commenced without writ;
- “Person” includes a body corporate or politic;
- “Receiver” includes consignee or manager appointed by or under an order of the Court;
- “Taxing Authority” means the person whose duty it is to tax the costs to be taxed;
- “The Act” means “The Nova Scotia Judicature Act, 1884”;
- “Master” means a Master of the Supreme Court;
- “Prothonotary” includes Deputy Prothonotary;
- “Sheriff” includes Deputy Sheriff, Coroner and other person discharging the duties of Sheriff in the particular case, or for the time being;
- “Solicitors” means Attorneys;
- “Plaintiff,” “defendant,” and “party,” include bodies politic or corporate holding the relation of plaintiff, defendant, or party.

2. In these Rules, unless repugnant to the context, the singular number shall include the plural, and the plural number shall include the singular. (E. 1042.) (868.)  
Singular and plural.

Order LXX.  
rr. 1-3.

## ORDER LXX.

## GENERAL RULES.

(869.)  
No revival by  
repeal.

1. No rule, order, or enactment, repealed by any subsequent rule, order, or enactment, shall be revived by any of these Rules, unless expressly so declared. (E. 1043.)

(870.)  
Former practice,  
when preserved.

2. Where no other provision is made by the Act or these Rules the procedure and practice existing before the first day of October, A. D. 1884, shall remain in force, notwithstanding the repeal of any provision or enactment. (E. 1044.)

(871.)  
Vacancy in office  
of Chief Justice.

3. During the period of any vacancy in the office of Chief Justice, or, in his absence, these Rules shall operate as if the words "or senior Judge of the Supreme Court" had been inserted after the words "Chief Justice" whenever used. (E. 1045.)

## ADDITIONAL RULES OF THE SUPREME COURT, 1884.

The Judges of the Supreme Court of Nova Scotia do hereby, in pursuance of the powers and authorities enabling them in that behalf, order and direct in manner following:

(872.)  
Examinations by  
whom opened,  
objections when  
to be taken; pro-  
ceedings thereon

1. Examinations of witnesses residing abroad may be opened by the Prothonotary at the instance of either party; and either party may notify the other of their being so returned, and no objections to such examinations being read shall avail, unless taken within eight days next after such notice served; the party objecting shall be required to specify his objections in writing, and the Court or a Judge, on summons, may then hear such objections and decide thereon. (C. 96 R. S., 4th Series, sec. 2.)

(873.)  
Examinations  
not to be set  
aside for tech-  
nical objections.

2. No examinations of witnesses residing abroad or taken *de bene esse* shall be set aside, unless the Court or Judge shall be of opinion that the objections are not of a purely technical character, and that substantial justice requires that such objections should prevail. (C. 96 R. S., 4th Series, sec. 10.)

(874.)  
Meaning of  
"heretofore"  
in Rules.

3. The word "heretofore" whenever appearing in the Rules made and promulgated the second day of October, 1884, shall, unless there is something in the subject or context repugnant thereto, mean prior to the first day of October, 1884.

(875.)  
Affidavits of ser-  
vice of writs of  
summons.

4. Affidavits of service of writs of summons may be made before a Justice of the Peace.

These additional Rules came into force the tenth day of December, A. D. 1884.



Appx. A.  
Part I.  
No 2.

The defendant (*or* defendants) may appear hereto by entering an appearance (*or* appearances) either personally or by solicitor at the Prothonotary's, Office, at \_\_\_\_\_, in the County of \_\_\_\_\_.

*Indorsements to be made on the writ before issue thereof.*

The plaintiff's claim is for, &c.

This writ was issued by the said plaintiff, who resides at \_\_\_\_\_, *or*, this writ was issued by *E. F.*, of \_\_\_\_\_, solicitor for the said plaintiff, \_\_\_\_\_, *or*, this writ was issued by *G. H.*, of \_\_\_\_\_, agent for \_\_\_\_\_ of \_\_\_\_\_ solicitor for the said plaintiff.

*Indorsement to be made on the writ after service thereof.*

This writ was served by me at \_\_\_\_\_, on the defendant \_\_\_\_\_, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 18—.

Indorsed the \_\_\_\_\_ day of \_\_\_\_\_, 18—.

(Signed,) \_\_\_\_\_.

(Address,) \_\_\_\_\_.

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**No. 2.**

SPECIALLY INDORSED WRIT, ORDER III., RULE 5.

18—. (*Here put the letter and number.*)

In the Supreme Court.

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

Victoria, by the Grace of God, &c.

To \_\_\_\_\_, of \_\_\_\_\_, in the county of \_\_\_\_\_ :

We command you, That within ten days after the service of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of \_\_\_\_\_. And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Issued the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

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

Appx. A.  
Part I.  
No. 3.

Appearance is to be entered at the Prothonotary's office, at \_\_\_\_\_, in the County of \_\_\_\_\_.

Statement of Claim:—

The plaintiff's claim is \_\_\_\_\_.

Particulars:—

Place of trial \_\_\_\_\_.

(Signed) \_\_\_\_\_.

And the sum of \$\_\_\_\_\_, (or such sum as may be allowed on taxation,) for costs. If the amount claimed is paid to the plaintiff or his solicitor or agent within six days from the service hereof, further proceedings will be stayed.

This writ was issued by the said plaintiff, who resides at \_\_\_\_\_, (or) this writ was issued by *E. F.*, of \_\_\_\_\_, solicitor for the said plaintiff, \_\_\_\_\_, (or) this writ was issued by *G. H.*, of \_\_\_\_\_, agent for \_\_\_\_\_, of \_\_\_\_\_, solicitor for the said plaintiff.

This writ was served by me at \_\_\_\_\_, on the defendant, \_\_\_\_\_, on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 18—.

Indorsed the \_\_\_\_\_ day of \_\_\_\_\_, 18—.

(Signed) \_\_\_\_\_.

(Address) \_\_\_\_\_.

**No. 3.**

WRIT FOR SERVICE OUT OF THE JURISDICTION, OR WHERE NOTICE IN LIEU OF SERVICE IS TO BE GIVEN OUT OF THE JURISDICTION.

18—. (*Here put the letter and number.*)

In the Supreme Court  
of Nova Scotia.

Between *A. B.*, Plaintiff,  
and  
*C. D.* and *E. F.*, Defendants.

VICTORIA, by the Grace of God, &c.

To *C. D.*, of \_\_\_\_\_.

We command you, *C. D.*, That within (*here insert the number of days directed by the Court or Judge ordering*



Appx. A.  
Part I  
No. 4.

*the service or notice) after the service of this writ (or notice of the writ, as the case may be) on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Supreme Court at \_\_\_\_\_, in the County of \_\_\_\_\_, in an action at the suit of A. B.; and take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence. Issued, &c.*

*Memoranda and Indorsement as in Form No. 1.*

*Indorsement to be made on the writ before the issue thereof.*

N. B.—This writ is to be used where the defendant, or all the defendants, or one, or more defendant, or defendants is or are out of the jurisdiction. When the defendant to be served is not a British subject, and is not in British dominion, notice of the writ, and not the writ itself, is to be served upon him.

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**No. 4.**

SPECIALLY INDORSED WRIT FOR SERVICE OUT OF THE  
JURISDICTION.

*(Heading as in Form 1.)*

VICTORIA, by the Grace of God, &c.

To \_\_\_\_\_, of \_\_\_\_\_, in the \_\_\_\_\_ of \_\_\_\_\_.

We command you, that within\* — days after service† \_\_\_\_\_ of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of \_\_\_\_\_.

And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Issued, &c.

---

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

\* Insert No. of days directed by Court or Judge.

† If notice of the writ is to be served, insert here, "of notice."

Appearance is to be entered at the Office of the Prothonotary at —, in the county of —.

APPX. A.  
Part I.  
No. 5.

Statement of Claim :—

The plaintiff's claim is —.

Particulars :—

Place of trial —.

(Signed) — —.

And \$ (or such sum as may be allowed on taxation) for costs. If the amount claimed is paid to the plaintiff or his solicitor or agent within — \*days from solicitor† hereof, further proceedings will be stayed.

—————  
This writ was issued, &c.

This writ (or notice of this writ) was served, &c.

N. B.—This writ is to be used where the defendant, or all the defendants, or one or more defendant or defendants, is or are out of the jurisdiction. When the defendant to be served is not a British subject, and is not in British dominions, notice of the writ and not the writ itself is to be served upon him.

—————  
**No. 5.**

NOTICE OF WRIT, IN LIEU OF SERVICE, TO BE GIVEN OUT OF THE JURISDICTION.

(Heading as in Form 1.)

To G. H., of —.

Take notice that A. B., of —, has commenced an action against you, G. H., in the Supreme Court of Nova Scotia, by writ of that Court, dated the — day of —, A. D. 18 —; which writ is indorsed as follows (*copy in full the indorsements*), and you are required within — days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said Court to the said action; and in default of your so doing, the said A. B., may proceed therein, and judgment may be given in your absence.

\* Insert No. of days limited for appearance.

† If notice to be served, insert here "of notice."

Appx. A.  
Part II.  
No. 1.

You may appear to the said writ by entering an appearance personally or by your solicitor at the office of the Prothonotary at \_\_\_\_\_, in the County of\_\_\_\_\_.

(Signed) A. B., of \_\_\_\_\_, &c.  
or  
X. Y., of \_\_\_\_\_, &c.  
Solicitor for A. B.

In the Supreme Court.

---

**No. 6.**

FORM OF MEMORANDUM FOR RENEWED WRIT.

*(Heading as in Form 1.)*

Seal renewed writ of summons in this action indorsed as follows:—*(copy original writ and indorsements.)*

---

**PART II.**

FORMS OF ENTRY OF APPEARANCE.

**No. 1.**

MEMORANDUM OF APPEARANCE IN GENERAL.

In the Supreme Court.

18—. No—.  
Between \_\_\_\_\_, Plaintiff,  
and  
\_\_\_\_\_, Defendant.

Entered an appearance for \_\_\_\_\_ in this action.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18—,

(Signed) \_\_\_\_\_,  
of \_\_\_\_\_,  
Agent for \_\_\_\_\_,  
of \_\_\_\_\_.

Appx. A.  
Part II.  
Nos. 2, 3.

---

No. 2.

NOTICE OF ENTRY OF APPEARANCE.

*(Heading as in form 1.)*

Take notice that — have this day entered an appearance at the Prothonotary's office at — for the defendant to the writ of summons in this action.

*(If statement of claim is required, add)* The said defendant require delivery of a statement of claim.

Dated the — day of —, 18—.

(Signed,) — —,

of —,

Agent for — —.

Solicitor for the defendant .

To — —.

\_\_\_\_\_

No. 3.

NOTICE LIMITING DEFENCE.

*(Heading as in Form 1.)*

Take notice, that the *(above-named)*, defendant, *(A. B.,)* limits his defence to part only of the property mentioned in the writ of summons, namely, to the close, called "The Big Field."

Dated the — day of —, 18—.

(Signed,) — —,

of —,

Agent for — —,

of —,

Solicitors for the above-named defendant.

To Messrs. — —,

The Plaintiff's Solicitors.

Appx. A.  
Part II.  
Nos. 4, 5,

**No. 4.**

## ENTRY OF APPEARANCE LIMITING DEFENCE.

*(Heading as in Form 1.)*

Enter an appearance for the defendant in this action. The said defendant limits his defence to part only of the property mentioned in the writ of summons, namely, to the close called "The Big Field."

The address of ——— is ———.

Dated the — day of ———, 18—.

(Signed,) ———,

of ———,

Agent for ———,

of ———.

**No. 5.**

## ENTRY OF APPEARANCE, Order XVI., Rule 50.

*(Heading as in Form 1.)*

Enter an appearance for ——— to the notice in this action, on the — day of ———, 18—, by the defendant under the Rules of the Supreme Court, 1884, Order XVI., Rule 50.

Dated the — day of ———, 18—.

(Signed,) ———,

of ———,

Agent for ———,

of ———.

No. 6.

Appx. A.  
Part II.  
Nos. 6-8.

ENTRY OF APPEARANCE, Order XVII, Rule 5.

(Heading as in Form 1.)

Enter an appearance for \_\_\_\_\_, who has been served with an order dated the \_\_\_\_\_ day of \_\_\_\_\_ to carry on and prosecute the proceedings in this action.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18—.

(Signed,) \_\_\_\_\_,

of \_\_\_\_\_,

Agent for \_\_\_\_\_,

of \_\_\_\_\_.

\_\_\_\_\_

No. 7.

ENTRY OF APPEARANCE TO COUNTER-CLAIM.

(Heading as in Form 1.)

Enter an appearance for \_\_\_\_\_ to the counter-claim of the above-named defendant, \_\_\_\_\_, in this action.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18—.

(Signed,) \_\_\_\_\_,

of \_\_\_\_\_,

Agent for \_\_\_\_\_,

of \_\_\_\_\_.

\_\_\_\_\_

No. 8.

AFFIDAVIT FOR ENTRY OF APPEARANCE AS GUARDIAN.

(Heading as in Form 1.)

I, \_\_\_\_\_, of \_\_\_\_\_, make oath and say as follows:—

A. B., of \_\_\_\_\_, is a fit and proper person to act as guardian *ad litem* of the above-named infant defendant, and has no interest in the matters in question in this

Appx. A.  
Part III.  
S. I.

action (matter) adverse to that of the said infant, and the consent of the said *A. B.*, to act as such guardian is hereto annexed.

Sworn, &c.

*[To this Affidavit shall be annexed the document signed by such guardian in testimony of his consent to act.]*

---

## PART III.

### GENERAL INDORSEMENTS ON WRITS OF SUMMONS.

#### Section I.

##### IN MATTERS OF AN EQUITABLE NATURE.

The plaintiff's claim is as a creditor of *X. Y.*, of ———, deceased, to have the (real and) personal estate of the said *X. Y.*, administered. The defendant *C. D.*, is sued as the administrator of the said *X. Y.*, (and the defendants *E. F.*, and *G. H.*, as his co-heirs at law).

2.

The plaintiff's claim is as a legatee under the will dated the ——— day of ———, 18—, of *X. Y.*, deceased, to have the (real and) personal estate of the said *X. Y.*, administered. The defendant, *C. D.*, is sued as the executor of the said *X. Y.*, (and the defendants, *E. F.* and *G. H.*, as his devisees).

3.

The plaintiff's claim is to have an account taken of the partnership dealings between the plaintiff and the defendant (under articles of partnership dated the ——— day of ———), and to have the affairs of the partnership wound up.

4.

The plaintiff's claim is to have an account taken of what is due to him for principal, interest, and costs on a mortgage dated the ——— day of ———, made between ——— (or by deposit of title deeds), and that the mortgage may be enforced by sale.

5.

The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage dated ——— and

made between (*parties*), and to redeem the property comprised therein.

Appx. A.  
Part III.  
s. II.

6.

The plaintiff's claim is that the sum of \$——, which by an indenture of settlement dated ——, was provided for the portions of the younger children of ——, may be raised.

7.

The plaintiff's claim is to have the trusts of an indenture dated ——, and made between ——, carried into execution.

8.

The plaintiff's claim is to have a deed dated ——, and made between (*parties*), set aside or rectified.

9.

The plaintiff's claim is for specific performance of an agreement dated the —— day of ——, for the sale by the plaintiff to the defendant of certain (*freehold*) hereditaments at ——.

---

**Section II.**

MONEY CLAIMS WHERE NO SPECIAL INDORSEMENT UNDER ORDER III., RULE 5.

The plaintiff's claim is \$      for the price of goods sold.

*(This Form shall suffice whether the claim be in respect of goods sold and delivered, or of goods bargained and sold.)*

The plaintiff's claim is \$      for money lent (and interest.)

The plaintiff's claim is \$      , whereof \$      is for the price of goods sold, and \$      for money lent, and \$      for interest.

The plaintiff's claim is \$      for arrears of rent.

The plaintiff's claim is \$      for arrears of salary as a clerk (*or as the case may be.*)

The plaintiff's claim is \$      for interest upon money lent.

The plaintiff's claim is \$      for a general average contribution.

The plaintiff's claim is \$      for freight and demurrage.

The plaintiff's claim is \$      for lighterage.

The plaintiff's claim is \$      for market tolls and stallage.



Appx. A.  
Part III.  
s. II.

The plaintiff's claim is \$        for penalties under the statute. ( . . . )

The plaintiff's claim is \$        for money deposited with the defendant as a banker.

The plaintiff's claim is \$        for fees for work done (*and* \$        money expended) as a solicitor.

The plaintiff's claim is \$        for commission earned as (*state character as auctioneer, broker, &c.*)

The plaintiff's claim is \$        for medical attendances.

The plaintiff's claim is \$        for a return of premiums paid upon policies of insurance.

The plaintiff's claim is \$        for the warehousing of goods.

The plaintiff's claim is \$        for the carriage of goods by railway.

The plaintiff's claim is \$        for the use and occupation of a house.

The plaintiff's claim is \$        for the hire of (*furniture*.)

The plaintiff's claim is \$        for work done as a surveyor.

The plaintiff's claim is \$        for board and lodging.

The plaintiff's claim is \$        for the board, lodging and tuition of *X. Y.*

The plaintiff's claim is \$        for money received by the defendant as solicitor (*or factor, or collector, or, &c.*) of the plaintiff.

The plaintiff's claim is \$        for fees received by the defendant under colour of the office of

The plaintiff's claim is \$        for a return of money overcharged for the carriage of goods by railway.

The plaintiff's claim is \$        for a return of fees overcharged by the defendant as

The plaintiff's claim is \$        for a return of money deposited with the defendant as stakeholder.

The plaintiff's claim is \$        for money entrusted to the defendant as stakeholder, and payable to plaintiff.

The plaintiff's claim is \$        for a return of money entrusted to the defendant as agent of the plaintiff.

The plaintiff's claim is \$        for a return of money obtained from the plaintiff by fraud.

The plaintiff's claim is \$        for a return of money paid to the defendant by mistake.

The plaintiff's claim is \$        for a return of money paid to the defendant for (work to be done, left undone; *or* a bill to be taken up, not taken up, *or* &c.)

The plaintiff's claim is \$        for a return of money paid as a deposit upon shares to be allotted.

The plaintiff's claim is \$        for money paid for the defendant as his surety.

The plaintiff's claim is \$        for money paid for rent due by the defendant.

Appx. A.  
Part III.  
s. II.

The plaintiff's claim is \$        upon a bill of exchange accepted (*or* endorsed) for the defendant's accommodation.

The plaintiff's claim is \$        for a contribution in respect of money paid by the plaintiff as surety.

The plaintiff's claim is \$        for a contribution in respect of a joint debt of the plaintiff and the defendant paid by the plaintiff.

The plaintiff's claim is \$        for money paid for calls upon shares, against which the defendant was bound to indemnify the plaintiff.

The plaintiff's claim is \$        for money payable under an award.

The plaintiff's claim is \$        upon a policy of insurance upon the life of *X. Y.*, deceased.

The plaintiff's claim is \$        upon a bond to secure a payment of \$1000 and interest.

The plaintiff's claim is \$        upon a judgment of the Court, in the State of Massachusetts.

The plaintiff's claim is \$        upon a cheque drawn by the defendant.

The plaintiff's claim is \$        upon a bill of exchange accepted (*or* drawn *or* endorsed) by the defendant.

The plaintiff's claim is \$        upon a promissory note made (*or* endorsed) by the defendant.

The plaintiff's claim is \$        against the defendant *A. B.*, as acceptor, and against the defendant *C. D.* as drawer (*or* indorser) of a bill of exchange.

The plaintiff's claim is \$        against the defendant as surety for the price of goods sold.

The plaintiff's claim is \$        against the defendant *A. B.*, as principal, and against the defendant *C. D.* as surety, for the price of goods sold (*or* arrears of rent, *or* for money lent, *or* for money received by the plaintiff *A. B.* as traveller for the plaintiff, *or* &c.)

The plaintiff's claim is \$        against the defendant as a *del credere* agent for the price of goods sold (*or* as losses under a policy.)

The plaintiff's claim is \$        for calls upon shares.

The plaintiff's claim is \$        for crops, tillage, manure, (*or as the case may be*), left by the defendant as outgoing tenant of a farm.

Appx. A.  
Part III.  
s. s. III.—IV.

### Section III.

#### INDORSEMENT FOR COSTS.

*Add to the above forms—*

And \$        for costs ; and if the amount claimed be paid to the plaintiff or his solicitor within six days (*or if the writ is to be served out of the jurisdiction, or notice in lieu of service allowed, insert the time for appearances limited by the rules*) from the service thereof, further proceedings will be stayed.

---

### Section IV.

#### DAMAGES AND OTHER CLAIMS.

The plaintiff's claim is that an account be taken of (*say what.*)

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff as traveller.

The plaintiff's claim is for damages for wrongful dismissal from the defendant's employment as traveller (and \$        for arrears of wages.)

The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as manager.

The plaintiff's claim is for damages for breach of duty as factor (*or, &c.*) of the plaintiff (and \$        for money received as factor, &c.)

The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of X. Y. to the defendant (*or plaintiff.*)

The plaintiff's claim is for damages for non-compliance with the award of X. Y.

The plaintiff's claim is for damages for assault and false imprisonment (and for malicious prosecution.)

The plaintiff's claim is for damages for assault and false imprisonment of the plaintiff *C. D.*

The plaintiff's claim is for damages for injury by the defendant's negligence as solicitor of the plaintiff.

The plaintiff's claim is for damages for negligence in the custody of goods (and for wrongfully detaining the same.)

The plaintiff's claim is for damages for negligence in the keeping of goods pawned (and for wrongfully detaining the same.)

The plaintiff's claim is for damages for negligence in the custody of furniture lent on hire (*or a carriage lent*), (and for wrongfully, &c.)

The plaintiff's claim is for damages for wrongfully neglecting (*or* refusing) to pay the plaintiff's cheque.

The plaintiff's claim is for damages for breach of a contract to accept the plaintiff's drafts.

The plaintiff's claim is upon a bond conditioned not to carry on the trade of a ———.

The plaintiff's claim is for damages for refusing to carry the plaintiff's goods by railway.

The plaintiff's claim is for damages for refusing to carry the plaintiff by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of coals by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea.

The plaintiff's claim is for damages for breach of charter-party of ship ("Mary.")

The plaintiff's claim is for return of household furniture, (*or, &c.,*) or their value, and for damages for detaining the same.

The plaintiff's claim is for wrongfully depriving plaintiff of goods, household furniture, &c.

The plaintiff's claim is for damages for libel.

The plaintiff's claim is for damages for slander.

The plaintiff's claim is in replevin for goods wrongfully distrained.

The plaintiff's claim is for damages for improperly distraining.

[*This form shall be sufficient whether the distress complained of be wrongful or excessive, or irregular, and whether the claim be for damages only, or for double value.*]

The plaintiff's claim is to recover possession of a house, No. — in — street (*or of a farm called Blackacre*), situate in the township of — in the County of —.

The plaintiff's claim is to establish his title to (*here describe property*), and to recover the rents thereof.

(*The two previous forms may be combined.*)

The plaintiff's claim is for dower.

The plaintiff's claim is for damages for infringement of the plaintiff's right of fishing.

The plaintiff's claim is for damages for fraudulent misrepresentation of the sale of a horse (*or a business or shares, or, &c.*)

The plaintiff's claim is for damages for fraudulent misrepresentation of the credit of *A. B.*

The plaintiff's claim is for damages for breach of a contract of guarantee for *A. B.*

Appx. A.  
Part III.  
s. IV.

The plaintiff's claim is for damages for breach of a contract to indemnify the plaintiff as the defendant's agent to distrain.

The plaintiff's claim is for a loss under a policy, upon the ship "Royal Charter," and freight or cargo (or for return of premiums.)

*[This form shall be sufficient whether the loss claimed be total or partial..]*

The plaintiff's claim is for a loss under a policy of fire insurance upon house and furniture.

The plaintiff's claim is for damages for breach of a contract to insure a house.

The plaintiff's claim is for damages for breach of a contract to keep a house in repair.

The plaintiff's claim is for damages for breaches of covenants contained in a lease of a farm.

The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man.

The plaintiff's claim is for damages for injury by the defendant's dog.

The plaintiff's claim is for damages for injury to the plaintiff by the negligent driving of the defendant or his servants.

The plaintiff's claim is for damages for injury to the plaintiff while a passenger on the defendant's railway, by the negligence of the defendant's servants.

The plaintiff's claim is for damages for injury to the plaintiff at the defendant's railway station, from the defective condition of the station.

The plaintiff's claim is as Executor of *A. B.*, deceased, for damages for the death of the said *A. B.* from injuries received while a passenger on the defendant's railway, by the negligence of the defendant's servants.

The plaintiff's claim is for damages for breach of promise of marriage.

The plaintiff's claim is for damages for the seduction of the plaintiff's daughter.

The plaintiff's claim is for damages for breach of contract to accept and pay for goods.

The plaintiff's claim is for damages for non-delivery (or short delivery, or defective quality, or other breach of contract of sale) of cotton (or, &c.)

The plaintiff's claim is for damages for breach of warranty of a horse.

The plaintiff's claim is for damages for breach of contract to sell (or purchase) land.

The plaintiff's claim is for damages for breach of contract to let (*or take*) a house.

The plaintiff's claim is for damages for breach of a contract to sell (*or purchase*) the lease, with goodwill, fixtures, and stock in trade of a public house.

The plaintiff's claim is for damages for breach of covenant for title (*or for quiet enjoyment, or, &c.,*) in a conveyance of land.

The plaintiff's claim is for damages for wrongfully entering the plaintiff's land and drawing water from his well, (*or cutting his grass, or pulling down his timber, or pulling down his fences, or removing his gate, or using his road or path, or crossing his field, or depositing sand there, or carrying away gravel thence, or carrying away stones from his river.*)

The plaintiff's claim is for damages for wrongfully taking away the support of plaintiff's land (*or house or mine.*)

The plaintiff's claim is for damages for wrongfully obstructing a way (*public highway or private way.*)

The plaintiff's claim is for damages for wrongfully diverting (*or obstructing, or polluting, or diverting water from*) a watercourse.

The plaintiff's claim is for damages for wrongfully discharging water upon plaintiff's land (*or into the plaintiff's mine.*)

The plaintiff's claim is for damages for wrongfully obstructing the plaintiff's use of a well.

The plaintiff's claim is for damages for the infringement of the plaintiff's right of pasture.

*(This form shall be sufficient whatever the nature of the right to pasture be.)*

The plaintiff's claim is for damages for obstructing the access of light to plaintiff's house.

The plaintiff's claim is for damages for the infringement of the plaintiff's patent.

The plaintiff's claim is for damages for the infringement of the plaintiff's copyright.

The plaintiff's claim is for damages for wrongfully using (*or imitating*) the plaintiff's trade mark.

The plaintiff's claim is for damages for breach of a contract to build a ship (*or to repair a house, &c.*)

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff to build a ship, &c.

The plaintiff's claim is for damages to his house, trees, crops, &c., caused by noxious vapours from the defendant's factory (*or, &c.*)

Appx. A.  
Part III.  
s. V.

The plaintiff's claim is for damages from nuisance by noise from the defendant's works (*or, stables, or, &c.,*)

The plaintiff's claim is for damages for loss of the plaintiff's goods in the defendant's inn.

*Add to Indorsement:—*

And for a mandamus commanding the defendant to

*Add to Indorsement:—*

And for an injunction to restrain the defendant from

*Add to Indorsement where claim is to land, or to establish title, or both:—*

And for mesne profits.

And for an account of rents or arrears of rent.

And for breach of covenant for [*repairs.*]

### Section V.

#### INDORSEMENTS OF CHARACTER OF PARTIES.

The plaintiff's claim is as executor [*or administrator*] of *C. D.*, deceased, for *&c.*

The plaintiff's claim is against the defendant, *A. B.*, as executor [*or &c.*] of *C. D.*, deceased, for, *&c.*

The plaintiff's claim is against the defendant *A. B.*, as executor of *X. Y.*, deceased, for, *&c.*, and against the defendant *C. D.*, in his personal capacity, for, *&c.*

The plaintiff's claim is as trustee under the bankruptcy of *A. B.* for ———.

The plaintiff's claim is as [*or the plaintiff's claim is against the defendant as*] trustee under the will of *A. B.*, [*or under the settlement upon the marriage of A. B. and X. Y., his wife.*]

The plaintiff's claim is as public officer of the ——— Bank, for ———.

The plaintiff's claim is against the defendant as public officer of the ——— Bank, for ———.

The plaintiff's claim is against the defendant *A. B.*, as principal, and against the defendant *C. D.*, as public officer of the ——— Bank, as surety, for ———.

The plaintiff's claim is against the defendant as heir-at-law of *A. B.*, deceased.

The plaintiff's claim is against the defendant *C. D.* as heir-at-law, and against the defendant *E. F.*, as devisee of lands under the will of *A. B.*

Appx. B.  
No. 1.

The plaintiff's claim is as well for the Queen as for himself, for ———.

---

APPENDIX B.

---

NOTICES, &c.

No. 1.

THIRD PARTY NOTICE.

18—. (*Here put the letter and number.*)

In the Supreme Court.

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

Notice filed ———, 18—.

To Mr. *X. Y.*:

Take notice that this action has been brought by the plaintiff, against the defendant (as surety for *M. N.*) upon a bond conditioned for payment of \$2,000 and interest to the plaintiff.

The defendant claims to be entitled to contribution from you to the extent of one half of any sum which the plaintiff may recover against him, on the ground that you are (his co-surety under the said bond, or also surety for the said *M. N.*, in respect of the said matter, under another bond made by you in favour of the said plaintiff, dated the ——— day of ———, A. D. ———.)

Or (as acceptor of a bill of exchange for \$500, dated the ——— day of ———, A. D. ———, drawn by you upon, and accepted by, the defendant, and payable three months after date.

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation.)



Appx. B.  
No. 2.

*Or* (to recover damages for a breach of a contract for the sale and delivery to the plaintiff of 1,000 tons of coal.

The defendant claims to be indemnified by you against liability in respect of the said contract, or any breach thereof, on the ground that it was made by him on your behalf and as your agent.)

And take notice that, if you wish to dispute the plaintiff's claim in this action as against the defendant *C. D.*, or your liability to the defendant *C. D.*, you must cause an appearance to be entered for you within eight days after service of this notice.

In default of your so appearing, you will be deemed to admit the validity of any judgment obtained against the defendant *C. D.*, and your own liability to contribute or indemnify to the extent herein claimed, which may be summarily enforced against you pursuant to the Rules of the Supreme Court, 1884, Order XVI., Part 6.

(Signed) *E. T.*

Or,

*X. Y.*,

Solicitor for the Defendant,

*E. T.*

Appearance to be entered at \_\_\_\_\_.

---

**No. 2.**

NOTICE OF COUNTER-CLAIM.

(Heading as in Form 1.)

To the within-named *X. Y.*:

Take notice that if you do not appear to the within counter-claim of the within-named *C. D.* within ten days from the service of this defence and counter-claim upon you, you will be liable to have judgment given against you in your absence.

Appearance to be entered at \_\_\_\_\_.

**No. 3.**APPX. B.  
Nos. 3-6.

## NOTICE OF PAYMENT INTO COURT.

*(Heading as in Form 1.)*

Take notice that the defendant has paid into Court \$ \_\_\_\_\_, and says that that sum is enough to satisfy the plaintiff's claim *(or the plaintiff's claim for, &c.)*

To Mr. X. Y.,  
the plaintiff's Solicitor.

Z,  
defendant's Solicitor.

**No. 4.**

## ACCEPTANCE OF SUM PAID INTO COURT.

*(Heading as in Form 1.)*

Take notice that the plaintiff accepts the sum of \$ \_\_\_\_\_ paid by you into Court in satisfaction of the claim in respect of which it is paid in.

**No. 5.**

## CONFESSION OF DEFENCE.

*(Heading as in Form 1.)*

The plaintiff confesses the defence stated in the \_\_\_\_\_ paragraph of the defendant's defence *(or of the defendant's further defence.)*

**No. 6.**

## INTERROGATORIES.

18—. *(Here put the letter and number.)*

In the Supreme Court.

Between A. B., plaintiff,  
and  
C. D., E. F., and G. H., defendants.

Interrogatories on behalf of the above-named *(plaintiff or defendant C. D.)* for the examination of the above-named *(defendants E. F. and G. H., or plaintiff.)*

Appx. B.  
Nos 7, 8.

1. Did not, &c.
2. Has not, &c.  
&c., &c., &c.

*(The defendant E. F. is required to answer the interrogatories numbered —.)*

*(The defendant G. H. is required to answer the interrogatories numbered —.)*

**No. 7.**

ANSWER TO INTERROGATORIES.

*(Heading as in Form 6.)*

The answer of the above-named defendant, *E. F.*, to the interrogatories for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named *E. F.*, make oath and say as follows:—

-----  
-----

**No. 8.**

AFFIDAVIT AS TO DOCUMENTS.

*(Heading as in Form 1.)*

I, the above-named defendant, *C. D.*, make oath and say as follows:—

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the said first schedule hereto.

3. That *(here state upon what grounds the objection is made, and verify the facts as far as may be.)*

4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

5. The last-mentioned documents were last in my possession or power on [*state when.*]

APPX. B.  
Nos. 9, 10.

6. That [*here state what has become of the last-mentioned documents, and in whose possession they now are.*]

7. According to the best of my knowledge, information, and belief, I have not now, and never had in my possession, custody, or power, or in the possession, custody, or power, of my solicitors or agents, solicitor or agent, or in the possession, custody, or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto.

---

**No. 9.**

NOTICE TO PRODUCE DOCUMENTS.

(*Heading as in Form 1.*)

Take notice that the (*plaintiff or defendant*) requires you to produce for his inspection the following documents referred to in your [*statement of claim, or defence, or affidavit, dated the — day of —, A. D. —.*]

*Describe documents required.*

X Y,

Solicitor to the —.

To Z,

Solicitor for —.

---

**No. 10.**

NOTICE TO INSPECT DOCUMENTS.

[*Heading as in Form 1.*]

Take notice that you can inspect the documents mentioned in your notice of the — day of —, A. D. — (*except the deed numbered in that notice*) at (*insert place of inspection*) on Tuesday next, the — inst., between the hours of 12 and 4 o'clock.

APPX. B.  
No. 11.

Or, that the (*plaintiff or defendant*) objects to giving you inspection of the documents mentioned in your notice of the — day of —, A. D. — on the ground that (*state the objection*):—

**No. 11.**

NOTICE TO ADMIT DOCUMENTS.

(*Heading as in Form 1.*)

Take notice that the plaintiff (*or defendant*) in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant (*or plaintiff*) his solicitor or agent, at —, on —, between the hours of —; and the defendant (*or plaintiff*) is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent or delivered, were so served, sent, or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause.

Dated, &c.

(Signed,)

*E. F.*, Solicitor [*or agent*] for  
defendant [*or plaintiff*].

To *G. H.*, Solicitor [*or agent*] for plaintiff [*or defendant*].

[*Here describe the documents, the manner of doing which may be as follows:*]

ORIGINALS.

Description of Documents.	Dates.
Deed of covenant between <i>A. B.</i> and <i>C. D.</i> first part, and <i>E. F.</i> second part.....	January 1, 1848.
Indenture of lease from <i>A. B.</i> , to <i>C. D.</i> .....	February 1, 1848,
Indenture of release between <i>A. B.</i> , <i>C. D.</i> first part, &c.....	February 2, 1848.
Letter, defendant to plaintiff.....	March 1, 1848.
Policy of insurance on goods by ship "Isabella" from Oporto to London.....	December 3, 1847.
Memorandum of agreement between <i>C. D.</i> , captain of said ship, and <i>E. F.</i> .....	January 1, 1848.
Bill of exchange for £100 at three months, drawn by <i>A. B.</i> , on and accepted by <i>C. D.</i> , indorsed by <i>E. F.</i> , and <i>G. H.</i> .....	May 1, 1849.

COPIES.

Appx. B.  
No. 12.

Description of Documents.	Dates.	Original or Duplicate served, sent or delivered, when, how and by whom.
Register of baptism of <i>A. B.</i> , in the parish of <i>X</i> .....	January 1, 1848.	
Letter—plaintiff to defendant.....	February 1, 1848.	Sent by General Post, February 2, 1848.
Notice to produce papers..	March 1, 1848.	Served March 2, 1848, on defendant's attorney by <i>E. F.</i> , of —.
Record of a Judgment of the Supreme Court in an action, <i>F. S.</i> v. <i>F. N.</i> .....	Trinity Term, 10th Vict.	
Grant under the Great Seal of Nova Scotia.....	January 1, 1780.	

No. 12.

NOTICE TO ADMIT FACTS.

*(Heading as in Form 1.)*

Take notice that the plaintiff (*or* defendant) in this cause requires the defendant (*or* plaintiff) to admit, for the purposes of this cause only, the several facts respectively hereunder specified; and the defendant (*or* plaintiff) is hereby required, within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this cause.

Dated, &c.

*G. D.*, solicitor (*or* agent) for the plaintiff  
(*or* defendant.)

To *E. F.*, solicitor (*or* agent) for the defendant (*or* plaintiff.)

The facts, the admission of which is required, are:—

1. That John Smith died on the 1st of January, 1870.
2. That he died intestate.
3. That James Smith was his only lawful son.
4. That Julius Smith died on the 1st of April, 1876.
5. That Julius Smith never was married.

Appx. B.  
Nos. 13, 14.

**No. 13.**

ADMISSION OF FACTS PURSUANT TO NOTICE.

(*Heading as in Form 1.*)

The defendant (*or plaintiff*) in this cause, for the purposes of this cause only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of such facts, or any of them, as evidence in this cause.

Provided that this admission is made for the purposes of this action only, and is not an admission to be used against the defendant, (*or plaintiff,*) on any other occasion, or by anyone other than the plaintiff, (*or defendant, or party requiring the admission.*)

Delivered, &c.

*E. F.*, solicitor (*or agent*), for the defendant,  
(*or plaintiff.*)

To *G. H.*, solicitor (*or agent*) for the plaintiff (*or defendant.*)

Facts admitted.	Qualifications or Limitations, if any, subject to which they are admitted.
1. That John Smith died on the 1st of January, 1870.	1.
2. That he died intestate.	2.
3. That James Smith was his lawful son.	3. But not that he was his only lawful son.
4. That Julius Smith died.	4. But not that he died on the 1st of April, 1876.
5. That Julius Smith never was married.	5.

**No. 14.**

NOTICE TO PRODUCE (GENERAL FORM).

(*Heading as in Form 1.*)

Take notice, that you are hereby required to produce and show to the Court on the trial of this ——— all books, papers, letters, copies of letters, and other writings and documents in your custody, possession, or power, containing

any entry, memorandum, or minute relating to the matters <sup>Appx. B.</sup> in question in this ———, and particularly ———. <sub>Nos. 15—17.</sub>

Dated the — day of — 18—.

To the above-named } (Signed) ———,  
 of ———,  
 h solicitor or agent . { agent for ———,  
 solicitor for the above-named ———

**No. 15.**

ISSUE.

*(Heading as in Form 1.)*

Whereas *A. B.* affirms, and *C. D.* denies (*here state the question or questions of fact to be tried*), and it has been ordered by the Hon. Mr. Justice ——— that the said question shall be tried (*here state mode of trial, whether with or without a jury*), therefore let the same be tried accordingly.

**No. 16.**

NOTICE OF TRIAL.

*(Heading as in Form 1.)*

Take notice of trial of this ——— (*or of the issues in this ——— order to be tried*) (*or as the case may be*) in ——— (*or as the case may be*); for the ——— day of ——— next.

*X. Y.*, plaintiff's solicitor (*or as the case may be.*)

Dated ———.

To *Z.*, defendant's solicitor (*or as the case may be.*)

**No. 17.**

CERTIFICATE OF OFFICER AFTER TRIAL WITH A JURY.

*(Heading as in Form 1.)*

I certify that this ——— was tried before the Honorable Mr. Justice ——— with a special jury of the county of ——— on the 12th and 13th days of November, 1884.



APPX. B  
Nos. 18, 19.

The jury found (*state findings.*)

The judge directed that judgment should be entered for the plaintiff for \$ — with cost of summons (*or as the case may be.*)

A. B.,  
(*Title of Officer.*)

The — day of — 18—.

**No. 18.**

NOTICE OF MOTION.

(*Heading as in Form 1.*)

Take notice, that the Court will be moved — on — day the — day of — 18— at — o'clock in the forenoon, or so soon thereafter as counsel can be heard, by — that —.

Dated the — day of —, 18—.

(Signed —,  
of —,  
agent for —,  
solicitor for the —.

To —,

**No. 19.**

NOTICE OF DISCONTINUANCE.

(*Heading as in Form 1.*)

Take notice, that the plaintiff hereby\* —  
† —.

Dated the — day of —, 18—.

(Signed) —,  
of —,  
agent for —,  
solicitor for the plaintiff.

To —.

\* "Wholly discontinues this action," or "withdraws so much of his claim in this action as relates to," &c.

† If not against all the defendants add "as against the defendant," &c.

**No. 20.**

APPX. B.  
Nos. 20, 21.

NOTICE OF CROSS-EXAMINATION OF DEONENTS AT TRIAL.

[*Heading as in Form 1.*]

Take notice that the \_\_\_\_\_ intend at the trial of this action to cross-examine the several deponents named and described in the schedule hereto on their affidavits therein specified.

And also take notice that you are hereby required to produce the said deponents for such cross-examination before the court aforesaid.

Dated \_\_\_\_\_ day of \_\_\_\_\_, 18—.

(Signed,) \_\_\_\_\_,  
Agent for \_\_\_\_\_,  
of \_\_\_\_\_,  
Solicitor for the \_\_\_\_\_.

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

The Schedule above referred to.

Name of Deponent.	Address and Description.	Date when Affidavit filed.

**No. 21.**

NOTICE OF RENEWAL OF WRIT OF EXECUTION.

[*Heading as in Form 1.*]

Take notice, that the writ of \_\_\_\_\_ issued in this action directed to the Sheriff of \_\_\_\_\_, and bearing date the \_\_\_\_\_ day of \_\_\_\_\_, 18—, has been renewed for one year from the \_\_\_\_\_ day of \_\_\_\_\_, 18—.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18—.

(Signed,) \_\_\_\_\_,  
of \_\_\_\_\_,  
Agent for \_\_\_\_\_,  
Solicitor for the \_\_\_\_\_.

To the Sheriff of \_\_\_\_\_.

Appx. B.  
Nos. 22, 23.

**No. 22.**

## AFFIDAVIT OF SERVICE OF SUMMONS.

[*Heading as in Form 1.*]

I, ———, of ———, solicitor for the above-named ———, make oath and say as follows:—

I did on the ——— day of ———, 18—, before the hour of ——— in the ———noon, serve ———, the above named ——— in this action with a true copy of the summons hereto annexed marked A, by leaving it at the ——— of the said ——— situate ——— with ——— there ———.

Sworn at ———, }  
—————, this ——— day }  
of ———; 18—. }

Before me, ———.

This affidavit is filed on behalf of the ———,

**No. 23.**

## AFFIDAVIT IN SUPPORT OF GARNISHEE ORDER.

In the Supreme Court

18—. No. ———.

Between ———, Judgment Creditor, and ———, Judgment Debtor.

I, ———, of ———, the above-named judgment creditor [*or* solicitor for the above-named judgment creditor] make oath and say as follows:—

1. By a judgment of the Court given in this action, and dated the ——— day of ———, 18—, it was adjudged that I [*or* the above-named judgment creditor] should recover against the above-named judgment debtor ——— the sum of \$—— and costs to be taxed, and the said costs were allowed at \$——.

2. The said ——— still remains unsatisfied to the extent of ——— and interest amounting to \$——.

3. \* ———, ———, ——— is indebted to the judgment debtor ——— in the sum of \$——, or thereabouts.

4. The said ——— is within the jurisdiction of this Court.

Sworn, &c.

\* Name, address and description of garnishee.

No. 24.

APPX. B.  
No. 24.

AFFIDAVIT ON INTERPLEADER.

(Heading as in Form 1.)

I, \_\_\_\_\_, of \_\_\_\_\_, the defendant in the above action, make oath and say as follows:—

1. The writ of summons herein was issued on the \_\_\_\_\_ day of \_\_\_\_\_, 18—, and was served on me on the \_\_\_\_\_ day of \_\_\_\_\_, 18—.

2. The action is brought to recover \_\_\_\_\_. The said \_\_\_\_\_ \*in my possession, but I claim no interest therein.

3. The right to the said subject-matter of this action has been and is claimed † by one \_\_\_\_\_, who ‡ \_\_\_\_\_.

4. I do not in any manner collude with the said \_\_\_\_\_ or with the above-named plaintiff, but I am ready to bring into Court or to pay or dispose of the said \_\_\_\_\_ in such manner as the Court may order or direct.

Sworn, &c.

\_\_\_\_\_

\* "Is" or "are."

† If claim in writing, make the writing an exhibit.

‡ State expectation of suit or that he has already sued.

APPX. C.  
ss. I, II  
No. 1

APPENDIX C.

FORMS OF STATEMENTS OF CLAIM TO BE USED PURSUANT  
TO ORDER XIX., RULE 5.

SECTION I.

18—. *Here put the letter and number.*

In the Supreme Court.

Writ issued the — of —, 18—. .  
Between A. B., Plaintiff,  
and  
C. D., Defendant.

Statement of Claim.

The plaintiff, &c.

(*or*),

The plaintiff's claim is, &c.

(*To be filled up in manner exemplified in the following forms.*)

The plaintiff claims (*as in following forms.*)

Place of trial, —.

(Signed) — — —.

Delivered the — of —, 18—.

SECTION II.

ACTIONS OF AN EQUITABLE NATURE.

No. 1.

(*Administration.*)

The plaintiff is a creditor of X. Y., deceased, of whom the defendant, C. D., is executor (*or* administrator), and the defendant E. F., is heir-at-law (*or* devisee.)

Particulars of the claim :

Appx. C.  
s. II.  
No. 2.

Principal due on the bond of the testator (or intestate) dated the — of — 18— ..	\$2,000 00
Interest from the — day of — at 6 per cent.	250 00
	\$2,250 00

The plaintiff claims to be paid the amount due to him, or to have the real and personal estate of the said X. Y. administered.

(Signed) ———.

Delivered ———.

**No. 2.**

*(Wilful Default.)*

1. The plaintiff is residuary legatee of A. B. of the city of Halifax, who died March 3rd, 1882, having made his will dated March 2nd, 1882, and appointed the defendants his executors, who proved his will April 6, 1882.

2. The defendants have been guilty of wilful default in not getting in certain property of the testator.

3. The wilful default on which the plaintiff relies is as follows:—

C. D. owed to the testator \$1000, in respect of which no interest had been paid or acknowledgment given for five years before the testator's death. The defendants were aware of this fact, but never applied to C. D. for payment until more than a year after testator's death, whereby the said sum was lost.

The plaintiff claims :

- (1.) Account of testator's personal estate on footing of wilful default.
- (2.) Administration of the testator's personal estate.

(Signed) ———.

Delivered ———.

Appx. C.  
s. II.  
Nos. 3, 4.

---

**No. 3.***(Dissolution of Partnership.)*

1. The plaintiff, on December 20th, 1875, entered into partnership articles with the defendant for ten years.

2. The defendant has broken the partnership articles as follows:—

- (a.) \_\_\_\_\_.  
(b.) \_\_\_\_\_.  
(c.) \_\_\_\_\_.

The plaintiff claims :

- (1.) Dissolution.  
(2.) Accounts and inquiries.  
(3.) A receiver and manager.

(Signed) \_\_\_\_\_

Delivered \_\_\_\_\_.

---

**No. 4.***(For Accounts.)*

1. The plaintiffs are executors of *A.*, deceased.

2. From the year 1878 till his death *A.* employed the defendant as his confidential agent in the management of a large building estate at *X.*

3. The defendant as such agent received large sums of money for the said *A.*, for which he refuses to account.

The plaintiff claims :

- (1.) Accounts of all sums received and paid by the defendant as agent of *A.*  
(2.) Payment of the amount found due.

(Signed) \_\_\_\_\_.

Delivered \_\_\_\_\_.

**No. 5.**

*(Foreclosure and Sale.)*

APPX. C.  
S. II.  
Nos. 5, 6.

1. The plaintiff is mortgagee of lands belonging to the defendant.

2. The following are the particulars of the mortgage :

- a. *(Date, and names of mortgagor and mortgagee.)*
- b. *(Sum secured.)*
- c. *(Rate of Interest.)*
- d. *(Property subject to mortgage.)*
- e. *(Amount now due.)*

*(If the plaintiff's title is a derivative title, state shortly the assignments under which he claims.)*

*(If the plaintiff is mortgagee in possession add) :*

3. The plaintiff took possession of the mortgaged property on the — of —, and is ready to account as mortgagee in possession from that time.

The plaintiff claims payment, or, in default, sale, or foreclosure (and possession).

(Signed,) ———.

Delivered ———.

**No. 6.**

*(Redemption.)*

1. The plaintiff is mortgagor of lands, of which the defendant is mortgagee.

2. The following are the particulars of the mortgage :

- a. *(Date.)*
- b. *(Sum secured.)*
- c. *(Rate of interest.)*
- d. *(Property subject to mortgage.)*

*(If the plaintiff's title is derivative, state shortly the deeds under which he claims.)*

*(If the defendant is mortgagee in possession add) :*

3. The defendant has taken possession (or has received the rents) of the mortgaged property.



Appx. C.  
s. II.  
Nos. 7, 8.

The plaintiff claims to redeem the said premises, and to have the same reconveyed to him, (and to have possession thereof).

(Signed,) \_\_\_\_\_.

Delivered \_\_\_\_\_.

**No. 7.**

1. By a settlement on the marriage of *A. B.* and *C. B.*, dated January 10, 1850, Whiteacre was demised to trustees for 99 years, on trust after the deaths of *A. B.* and *C. B.* to raise \$5000 for the younger children of the marriage who should attain 21.

2. *A. B.* died February 15, 1870.

3. *C. B.* died June 10, 1875.

4. There were 5 children only of the marriage of *A. B.* and *C. B.*, all of whom are now living and have attained 21. The plaintiff is the second born child.

5. The defendants were on April 5, 1877, appointed trustees of the settlement.

The plaintiff claims :

1. To have \$5000 raised by sale or mortgage and distributed among the persons entitled.

(Signed,) \_\_\_\_\_.

Delivered \_\_\_\_\_.

**No. 8.**

1. On November 12, 1880, *A.* and the defendant *B.* deposited with the plaintiff 500 United States bonds as security for a debt of \$— and interest at 6 per cent. due from *A.* and the defendant *B.* to the plaintiff.

2. *A.* died March 12, 1881.

3. On March 30, 1881, administration of the estate of *A.* was granted to the defendant *C.*

4. \$800 and \$30 for interest is owing to the plaintiff on the security of the said bonds.

The plaintiff claims :

(1.) Sale of the said bonds.

(2.) Application of the proceeds in payment of his debt.

(3.) Distribution of the surplus among the parties entitled.

(Signed,) \_\_\_\_\_.

Delivered \_\_\_\_\_.

**No. 9.**

Appx. C.  
s. II.  
Nos. 9, 10.

1. By a settlement dated July 3rd, 1872, on the marriage of the plaintiffs' father and mother, of which the defendant *A. B.* and one *C. D.* were trustees, the plaintiffs are absolutely entitled on the deaths of their father and mother.

2. On August 5, 1874, *C. D.* died and the defendant *E. F.* was appointed in his place.

3. On December 1, 1879, the plaintiffs' father died.

4. On January 1, 1880, the plaintiffs' mother died.

5. The defendants have committed the following breaches of trust by :

- (a.) Sale of \$3000 Bank Stock and investment of the proceeds in the business of the defendant *A. B.*
- (b.) Sale of leasehold property worth \$5000 to *G. H.* for \$1000 (without taking any proper steps to ascertain its value or to obtain such value.)

The plaintiff claims :

- (1.) The replacement of \$3000 Bank Stock and \$6 per cent. interest on the proceeds of the Bank Stock sold, from the date of sale till replacement.
- (2.) Payment of \$4000 and interest at 6 per cent. per annum from the date of the sale.

(Signed) \_\_\_\_\_.

Delivered \_\_\_\_\_.

**No. 10.**

1. By a settlement dated June 10, 1856, upon trust for *A. B.* and *C. B.* successively for life, with remainder for their children who should attain 21, the following property was assured :

- a. A sum of \$5000 Dominion Stock.
  - b. \$4000 invested on mortgage of land at *X.*
  - c. One fifth of the residuary estate of *D.*, deceased, subject to a prior life-interest.
- 2. On August 15, 1862, *C. B.* died.
  - 3. On February 18, 1875, *A. B.* died.

APPX. C.  
S. II.  
No. 11.

4. On September 10, 1879, *D.* died.
5. *A. B.* and *C. B.* had five children only, of whom the plaintiff is one.
6. The defendants are the present trustees of the settlement.

The plaintiff claims :

- (1.) Execution of the trusts of the settlement.
- (2.) All necessary accounts and inquiries.
- (3.) A receiver.

(Signed) \_\_\_\_\_.

Delivered \_\_\_\_\_.

**No. 11.**

1. In 1865 a marriage was arranged between *A. B.* and the plaintiff.

2. By an agreement contained in two letters, dated February 10 and 12, 1865, it was agreed between *C. B.*, the father of *A. B.*, and *D.*, the father of the plaintiff, that each should settle \$10,000 on trust, for *A. B.* and the plaintiff successively for life, with remainder on the usual trusts for the children of the marriage.

3. By letter, dated March 7, 1865, from *D.* to Messrs. *E. & Co.*, his solicitors, he instructed them to prepare a settlement.

4. A settlement, dated April 25, 1865, was executed upon the marriage of *A. B.* and the plaintiff, accidentally omitting to give a life interest to the plaintiff after the life interest of *A. B.*

5. On May 20, 1882, *A. B.* died.

6. The defendants *H.* and *K.* are the present trustees of the settlement.

7. The defendants, *L.*, *M.* and *N.*, are the only children of the marriage.

The plaintiff claims :

Rectification of the settlement.

(Signed) \_\_\_\_\_.

Delivered \_\_\_\_\_.

**No. 12.**

Appx. C.  
s. II.  
Nos. 12, 13.

1. By an agreement (*or* letters) dated (*or* made verbally at interviews on or about) the — day —, the plaintiff agreed to sell to the defendant the Home Farm, Annapolis, for \$——. The sale was to be completed on the — of —.

(*If the agreement was verbal, add*)

2. The agreement so entered into has been part performed as follows (*state how.*)

The plaintiff claims specific performance of the above agreement, and that the defendant may be ordered to execute a proper conveyance of the premises to the plaintiff (*stating in each case what the defendant is required specifically to do.*)

(Signed) — —.

Delivered —.

**No. 13.**

1. By will, dated January 5, 1864, *A.* devised Whiteacre to *B.*, *C.*, and *D.* as tenants in common.

2. On March 10, 1865, *A.* died.

3. On March 20, 1865, *A.*'s will was proved.

4. On June 25, 1867, *B.* conveyed to the plaintiff his share of Whiteacre.

5. On July 30, 1869, *C.* conveyed his share to the defendants on trust for sale.

6. By will, dated November 5, 1872, *D.* devised his share among his children equally.

7. On December 2, 1872, *D.* died.

8. On December 15, 1872, *D.*'s will was proved.

9. There were 10 children of *D.* living at his decease, some of whom have since died.

10. Whiteacre consists of a mansion house and grounds.

11. A sale of the property and a division of the proceeds will be more beneficial than a division of the property.

Appx. C.  
s. III.  
No. 1.

The plaintiff claims:  
A division of Whiteacre among the parties interested,  
(or a sale of Whiteacre and a distribution of the proceeds  
among the parties interested.)

(Signed) \_\_\_\_\_  
Delivered \_\_\_\_\_.

**No. 14.**

1. By will, dated August 10, 1882, A. devised Whiteacre and \$10,000 to defendant on trust for plaintiff.
2. On August, 15, 1882, A. died.
3. On August 30, 1882, probate was granted to the defendant, the sole executor.
4. The plaintiff is an infant 12 years old.

The plaintiff claims:

- (1.) That the plaintiff may become a ward of Court.
- (2.) Administration of the trusts of the will of A. so far as necessary.

(Signed) \_\_\_\_\_  
Delivered \_\_\_\_\_.

**SECTION III.**

ACTIONS INCLUDED IN ORDER III., RULE 5, CLASSES A., B.,  
C., D., E., AND F.

**No. 1.**

The plaintiff's claim is for the price of goods sold and delivered.

Particulars:—

1881—31st December,—		
Balance of account for butcher's meat to this		
date.....	\$135	00
1882—1st January to 31st March,—		
Butcher's meat.....	72	50
		\$207 50
1882—1st February.—Paid.....	45	00
		\$162 50

Place of trial, Halifax.  
(Signed,) \_\_\_\_\_

Delivered \_\_\_\_\_.

**No. 2.**

Appx. C.  
s. III.  
Nos. 2-4.

The plaintiff's claim is for money received by the defendant for the use of the plaintiff.

Particulars:—

1882—1st January,—

To amount of rents of No. 5 Smith St., collected by the defendant.....	\$200 00
To deposit on intended sale of Eva Villa....	100 00
	\$300 00

Place of trial, Halifax.

(Signed,) \_\_\_\_\_.

Delivered \_\_\_\_\_.

**No. 3.**

The plaintiff's claim is against the defendant as maker of a promissory note for \$250, dated 1st January, 1882, payable four months after date.

Particulars:—

Principal.....	\$250 00
Interest.....	10 00
	\$260 00

Place of trial, Port Hood, Co. Inverness.

(Signed,) \_\_\_\_\_.

Delivered \_\_\_\_\_.

**No. 4.**

The plaintiff's claim is against the defendant, as acceptor of a bill of exchange for \$400, dated 1st January, 1882, drawn by *A. B.*, payable three months after date to the order of *E. F.*, and indorsed to the plaintiff.

Particulars:—

Principal due.....	\$400 00
Interest....	16 00
	\$416 00

(Signed,) \_\_\_\_\_.

Delivered \_\_\_\_\_.

Appx. C.  
s. III.  
Nos. 5-7.

**No. 5.**

The plaintiff's claim is against the defendant *A. B.*, as acceptor, and against the defendant, *C. D.*, as drawer, of a bill of exchange for \$500, dated 1st January, 1882, payable three months after date, and indorsed by the defendant *C. D.* to the plaintiff, of the dishonor of which on presentation the defendant *C. D.* had notice.

Particulars:

Principal.....	\$500 00
Interest.....	20 00

Amount due.....	<u>\$520 00</u>
-----------------	-----------------

Place of trial, Town of Pictou.

(Signed) \_\_\_\_\_.

Delivered \_\_\_\_\_.

**No. 6.**

The plaintiff's claim is against the defendant as drawer of a bill of exchange for \$600, dated 1st March, 1882, drawn upon *A. B.*, payable to the plaintiff three months after date, which was duly presented for payment and dishonored, but *A. B.* had no effects of the defendant nor was there any consideration for the payment of the said bill by the said *A. B.*

Particulars (as in Form 4.)

Place of trial \_\_\_\_\_.

(Signed) \_\_\_\_\_.

Delivered \_\_\_\_\_.

**No. 7.**

The plaintiff's claim is for principal and interest due on the defendant's bond to the plaintiff, dated first of January, 1873, conditioned for payment of \$200, on the 26th December, 1873.

Particulars:—

Principal.....	\$150 00
Interest.....	2 00

Amount due.....	<u>\$152 00</u>
-----------------	-----------------

Place of trial, Truro.

(Signed) \_\_\_\_\_.

Delivered \_\_\_\_\_.

**No. 8.**

Appx. C.  
s. III.  
Nos. 8, 9.

The plaintiff's claim is for principal and interest, due under a covenant in a deed, dated the 1st of January, 1882.

Particulars:—

Principal.....	\$500 00
Paid.....	20 00
	<hr/>
Principal due.....	\$480 00
Interest.....	3 00
	<hr/>
Amount due.....	\$483 00
	<hr/>

Place of trial, Halifax.

(Signed) \_\_\_\_\_.

Delivered \_\_\_\_\_.

**No. 9.**

The plaintiff's claim is for the price of goods sold and delivered by the plaintiff to *E. F.*, under the following guarantee:—

2nd February, 1882.

SIR,—

In consideration of your supplying goods to *E. F.*, I undertake to see you paid.

Yours, &c.,  
*C. D.*, defendant.

To Mr. *A. B.*, (plaintiff)

Particulars:—

1882.

25 March, 55 tons of coal at \$5.....	\$275.00
	<hr/>
Amount due.....	

Place of trial, \_\_\_\_\_.

(Signed) \_\_\_\_\_.

Delivered \_\_\_\_\_.



Appx. C.  
s. III.  
Nos. 10-12.

**No. 10.**

The plaintiff's claim is against the defendant *A. B.*, as principal, and against the defendant *C. D.*, as surety for the price of goods sold and delivered by the plaintiff to *A. B.*, on the guarantee by *C. D.*, dated the 2nd of February 1882.

Particulars:—

2nd February—Goods.....	\$200 00
3rd March—Goods.....	100 00
17th March—Goods.....	80 00
5th April—Goods.....	30 00
	\$410 00
Amount due.....	\$410 00

Place of trial, Windsor.

(Signed \_\_\_\_\_)

Delivered \_\_\_\_\_.

**No. 11.**

The plaintiff's claim is against the defendants as trustees under the settlement upon the marriage of *A. B.* and *X. Y.*, dated January 1st, 1870, whereby \$10,000 invested on mortgage of land at *Z.* was vested in the defendants as trustees upon trust to pay the income thereof half-yearly to the plaintiff.

Particulars:—

1882, December 25th, half a year's income.. \$300 00

**No. 12.**

See Sect. VI., Form No. 1.

(Landlord against Tenant.)

SECTION IV.

APPX. C.  
S. IV.  
Nos. 1, 2.

ACTIONS FOR DAMAGES FOR BREACH OF CONTRACT OR DUTY  
ARISING OUT OF CONTRACT.

No. 1.

1. The plaintiff has suffered damage by breach of contract for sale and delivery by the defendant to the plaintiff of 100 tons of pig iron at \$20 per ton to be delivered on rail at Halifax, on the 15th of March, 1882.

2. The defendant did not deliver any (or ----- tons, as the case may be) of the said iron.

Particulars of damage :—

Loss of profit at \$4 per ton on 100 tons.... \$400 00

The plaintiff claims \$400.

Place of trial, Halifax.

(Signed) -----

Delivered -----

No. 2.

1. The plaintiff has suffered damage by breach of a contract between the plaintiff and the defendant, for sale and delivery of 100 sacks of flour known as seconds at \$6 per sack.

2. 80 sacks delivered were inferior to seconds, and 20 sacks were not delivered.

Particulars of damage :—

80 sacks at \$1.....\$ 80 00

20 sacks at \$1.25..... 25 00

-----  
\$105 00  
-----

The plaintiff claims \$105.

Place of trial, Windsor.

(Signed,) -----

Delivered -----

Appx. C.  
s. IV.  
No 3-5.

**No. 3.**

1. The plaintiff has suffered damage by breach of a charter-party dated the 10th of March, 1882, between the plaintiff and the defendant of the ship "Mary."

2. The ship was detained at the port of loading.

Particulars of damage :—

1882.	Jan. 1	}	10 days' detention beyond the demurrage days at \$80 per day. \$800 00
	to		
	Jan. 10.		

The plaintiff claims \$800.

Place of trial, Halifax.

Delivered \_\_\_\_\_, (Signed) \_\_\_\_\_.

**No. 4.**

1. The plaintiff has suffered damage by breach of contract by bill of lading of goods shipped by the plaintiff on board the "Jane," signed by the defendant, dated the 1st of January, 1882.

2. 50 bales of cotton were delivered in a damaged condition.

Particulars of damage :—

50 bales at \$10 ..... \$500 00

The plaintiff claims \$500.

Place of trial, Town of Pictou.

Delivered \_\_\_\_\_, (Signed,) \_\_\_\_\_.

**No. 5.**

1. The plaintiff has suffered damage by breach of contract by bill of lading of goods shipped by the plaintiff signed by the master of the ship "Mary" as the defendant's agent, dated the 1st of January, 1882.

2. 50 quarters of wheat were delivered in a damaged condition, and 100 quarters were not delivered.

Particulars of damage:—

		Appx. C. S. IV. Nos. 6, 7.
100 quarters at \$8.00.....	\$800 00	
50 quarters at \$1.00.....	50 00	
	\$850 00	

The plaintiff claims \$850.00.

Place of trial, Guysboro', in the Co. of Guysboro'.

(Signed) \_\_\_\_\_.

Delivered \_\_\_\_\_.

**No. 6.**

The plaintiff was interested to the amount of \$——under a marine policy of insurance for that amount, dated the ——day of ——18——, on the ship "Hero," subscribed by the defendant for \$——.

Particulars:—

1. Valued or open:—Valued at \$20,000.00.
2. Voyage:—At and from Cardiff to Valparaiso.
3. (Or, Time:—From noon of 1st January, 1882, to noon of 1st January, 1883).
4. Premium to defendant:—\$——per cent.
5. Perils insured against causing loss:—Of the seas.
6. Loss:—Total (or exceeding 3 per cent.)

The plaintiff claims \$——.

Place of trial, Truro.

(Signed) \_\_\_\_\_.

Delivered \_\_\_\_\_.

**No. 7.**

The plaintiff has suffered damage from the defendants' negligence in carrying the plaintiff as a passenger by railway from New Glasgow to Antigonish, causing personal injuries to the plaintiff, in a collision near St. James' River, on the 15th January, 1883.

Appx. C.  
s. IV.  
Nos. 8, 9.

## Particulars of expenses, &amp;c. :—

Loss of 15 weeks' salary as clerk, at \$10.00	
per week.....	\$150 00
Dr. Smith.....	50 00
Nurse for 6 weeks.....	24 00
	<hr/>
	\$224 00
	<hr/>

The plaintiff claims \$224 00.

Place of trial, Antigonish.

(Signed) \_\_\_\_\_.

Delivered \_\_\_\_\_.

**No. 8.**

1. The plaintiff has suffered damage from the defendant's negligence in his conduct for the plaintiff, as his solicitor, of business undertaken by the defendant on the plaintiff's retainer.

2. The negligence was in making an application under Order ., Rule ., in the case of *A. B.* (the plaintiff) vs. *C. D.*, where the case was one of unliquidated damages and not of debt.

## Particulars of damage :—

Taxed costs paid to defendant on dismissal of summons \$\_\_\_\_\_.

The plaintiff claims \$\_\_\_\_\_.

Place of trial\_\_\_\_\_.

(Signed) \_\_\_\_\_.

Delivered\_\_\_\_\_.

**No. 9.**

1. By a repairing covenant contained in a lease under seal from the plaintiff to the defendant, dated the 1st of January, 1876, of a house No. 401 Bedford Row, for seven years from the 25th of December, 1875, the defendant covenanted to keep the premises in such repair and condition as therein mentioned.

2. The premises were during the term out of such repair as was required by the covenant.

APPX. C.  
S. V.  
No. 1.

3. They were yielded up out of such repair at the expiration of the term.

4. Particulars of dilapidations were delivered to the defendant's solicitor on the — of —, 18—, and exceed three folios.

The plaintiff claims \$—.

Place of trial —.

Delivered —. (Signed,) —.

**No. 10.**

1. The plaintiff has suffered damage by breach of promise by the defendant to marry her on the — of —, (*or*, within a reasonable time, which elapsed before action), (*or*, on the death of *A. B.*, which happened before action).

2. The defendant refused to marry the plaintiff on the — of —, (*or*, within a reasonable time) (*or*, on the death of *A. B.*)

Particulars of special damage:—

(*As the case may be, if any.*)

The plaintiff claims \$—.

Place of trial —.

Delivered —. (Signed,) —.

**SECTION V.**

ACTIONS CLAIMING INJUNCTIONS, DAMAGES, OR DECLARATIONS OF RIGHT FOUNDED ON WRONGS.

**No. 1.**

The plaintiff has suffered damage by the defendant wrongfully depriving the plaintiff of two casks of oil by refusing to give them up on demand (*or*, throwing them out of a boat in the London Docks, &c.)

APPX. C.  
S. V.  
Nos. 2, 3.

*(If any damage is claimed, add)—*

Particulars *(fill them in.)*

The plaintiff claims \$500.

Place of trial, Halifax.

Delivered \_\_\_\_\_, (Signed,) \_\_\_\_\_.

**No. 2.**

The defendant detained from the plaintiff the plaintiff's goods and chattels, that is to say, a horse, harness and gig.

The plaintiff claims a return of the said goods and chattels or their value, and \$100 for their detention.

Place of trial, Annapolis, in the County of Annapolis.

Delivered \_\_\_\_\_, (Signed,) \_\_\_\_\_.

**No. 3.**

The plaintiff has suffered damage from personal injuries to the plaintiff and damage to his carriage, caused by the defendant or his servant on the 15th of January, 1882, negligently driving a cart and horse in Granville Street.

Particulars of expenses, &c. :—

Charge of Mr. Smith, surgeon.....	\$100 00
Charge of Mr. Jones, coachmaker.....	80 00
	\$180 00

The plaintiff claims \$180.

Place of trial, Halifax.

Delivered \_\_\_\_\_, (Signed,) \_\_\_\_\_.

**No. 4.**

Appx. G.  
s. V.  
Nos. 4-6.

The plaintiff as executor of *C. D.*, deceased, brings this action for the benefit of *Eva*, the wife, and *William* and *Margaret* and *Dorothea*, the children of *C. D.*, (*as the case may be*), who have suffered damage from defendant's negligence in carrying the said *C. D.* by omnibus, whereby the said *C. D.* was killed in *Kentville* on the 15th January, 1882.

Plaintiff claims \$1000.

Place of trial, *Halifax*.

Delivered \_\_\_\_\_ (Signed) \_\_\_\_\_.

**No. 5.**

The plaintiff has suffered damage from injuries to his ship the "*Betsy*," and the cargo on board thereof, by a collision with the ship "*Jane*," caused by the negligent navigation thereof by the defendant or his servants in the Harbor of *Halifax*, on the 1st of February, 1883.

Particulars of loss and expenses:—

1. Charges of *Jones & Co.*, shipwrights, \$2100.
2. Loss of use of ship from 1st February, 1883, to 1st of March, 1883, \$1000.

Particulars of damage to cargo:—

*(Insert them.)*

The plaintiff claims \$\_\_\_\_\_.

Place of trial, *Halifax*.

Delivered \_\_\_\_\_ (Signed) \_\_\_\_\_.

**No. 6.**

The defendant has infringed the plaintiff's patent, No. 14,084, granted for the term of 14 years, from the 21st May, 1880, for certain improvements in the manufacture of iron and steel, whereof the plaintiff was the first inventor.



**APPX C.**  
**S. V.**  
**NOS. 7, 8.**

The plaintiff claims an injunction to restrain the defendant from further infringement, and \$500 damages.

Particulars of breaches are delivered herewith.

Place of trial, Amherst.

(Signed) \_\_\_\_\_.

Delivered \_\_\_\_\_.

**No. 7.**

The defendant has infringed the plaintiff's copyright in a book entitled "The History of Rome," registered on the \_\_\_\_\_ day of \_\_\_\_\_.

Particulars of special damage are as follows:—

Loss of sale of 50 copies.....	\$250 00
Loss of profit in the copyright.....	250 00
	\$500 00.

The plaintiff claims \$500.

Place of trial, Windsor.

(Signed) \_\_\_\_\_.

Delivered \_\_\_\_\_.

**No. 8.**

1. The defendant has infringed the plaintiff's trade mark.

2. The trade mark is (*describe it.*)

(*If the plaintiff is not the original proprietor of the trade mark, show shortly how his title is derived.*)

3. The following are the acts complained of, viz:

(*Set them out.*)

The plaintiff claims an injunction to restrain the defendant, his servants, and agents, from infringing the plaintiff's said trade mark, and in particular from (*stating any particular injunction sought.*)

The plaintiff also claims an account or damages.

(Signed) \_\_\_\_\_.

Delivered \_\_\_\_\_.

**No. 9.**

Appx. C.  
s. V.  
Nos. 9, 10.

The plaintiff has suffered damage from the seduction and carnally knowing by the defendant of *G. H.*, the (daughter and) servant of the plaintiff.

Particulars of special damage are as follows:—

Loss of service from the 1st of March, to the 30th November, 1882.....	\$200 00
Nursing and medical attendance.....	50 00
	\$250 00

The plaintiff claims \$250.

Place of trial, Lunenburg.

(Signed) \_\_\_\_\_.

Delivered \_\_\_\_\_.

**No. 10.**

1. The plaintiff is the owner (*or lessee*) and occupier of a house, 700 Park street, Halifax, in which are the following ancient lights:—

- (1.) The kitchen window in the basement on the south side.
- (2.) The two back dining room windows on the ground floor on the south side.
- (3.) The landing window and back drawing room window on the south side.

2. The defendant is erecting a building, which will, if not stopped, materially diminish the light coming through the said windows.

The plaintiff claims an injunction to restrain the defendant, his contractors, servants and workmen, from continuing the erection of the building, so as to obstruct or diminish the access of light to the said windows or any of them.

The plaintiff will also, if necessary, claim to have the said building pulled down, or damages for the injury he will sustain, if the same is completed and not pulled down.

(Signed) \_\_\_\_\_.

Delivered \_\_\_\_\_.

APPX. C.  
s. V.  
Nos. 11, 12.

**No. 11.**

The plaintiff has suffered damage from offensive and pestilential smells and vapours caused by the defendant in the plaintiff's dwelling house, No. 15 James street, Truro.

The plaintiff claims:—

- (1.) \$250.00.
- (2.) An injunction to restrain the defendant from the continuance or repetition of the said injury or the committal of any injury of a like kind, in respect of the same property.

Place of trial, Truro, in the County of Colchester.

Delivered \_\_\_\_\_, (Signed) \_\_\_\_\_.

**No. 12.**

1. The plaintiff is the owner (*or* lessee) and occupier of a farm known as \_\_\_\_\_, through which there runs a river known as \_\_\_\_\_.

2. The defendant or persons in his employ pollute the water in the said river by passing into the same the refuse of the defendant's dye works, situate higher up the said river.

The plaintiff claims an injunction to restrain the defendant, his servants and agents from sending from the said dye works into the said river any matter so as to pollute the waters thereof, or to render them unwholesome or unfit for use, to the injury of the plaintiff, (*or as the case may be.*)

The plaintiff will also claim damages in respect of the said nuisance.

Place of trial, \_\_\_\_\_, (Signed) \_\_\_\_\_.

Delivered \_\_\_\_\_.

No. 13.

Appx. C.  
s. V.  
Nos. 13, 14.

1. On 31st January, 1883, the defendant issued a prospectus to the public, relating to the A. B. Company, Limited.

2. On February 1st, 1883, the plaintiff received a copy of this prospectus.

3. The plaintiff subscribed for 100 shares in the company on the faith of this prospectus.

4. The prospectus contained misrepresentations, of which the following are particulars:—

- (a.) The prospectus stated "...whereas in fact....
- (b.) The prospectus stated "...whereas in fact....
- (c.) The prospectus stated "...whereas in fact....

5. The defendant knew of the real facts as to the above particulars.

6. The following facts, which were within the knowledge of the defendants, are material, and were not stated in the prospectus:—

- (a.) \_\_\_\_\_.
- (b.) \_\_\_\_\_.

7. The plaintiff has paid calls to the Company to the extent of \$2000.00.

The plaintiff claims:—

- (1.) Repayment of \$2000.00 and interest.
- (2.) Indemnity.

(Signed,) \_\_\_\_\_.

Delivered \_\_\_\_\_.

No. 14.

The plaintiff has suffered damage from the defendant inducing the plaintiff to buy the goodwill and lease of the George Hotel, Windsor, by fraudulently representing to the plaintiff that the takings of the said hotel were \$80 a week, whereas in fact they were much less, to the defendant's knowledge.

Particulars of special damage:—

*(Fill them in.)*

The plaintiff claims \$\_\_\_\_\_.

(Signed,) \_\_\_\_\_.

Delivered \_\_\_\_\_.

Appx. C.  
s. VI.  
No. 1.

**No. 15.**

The defendant maliciously and without reasonable and probable cause preferred a charge of larceny against the plaintiff before a justice of the peace, causing the plaintiff to be sent for trial on the charge and imprisoned thereon, and prosecuted the plaintiff thereon at the Supreme Court, at Pictou, where the plaintiff was acquitted.

Particulars of special damage :—

Messrs. L. & L.'s bill of costs, \$300.

Loss in business from January 1, 1833, to February 18, 1833, \$500.

The plaintiff claims \$800.

Place of trial \_\_\_\_\_.

Delivered \_\_\_\_\_ (Signed,) \_\_\_\_\_.

---

**SECTION VI.**
**ACTIONS FOR RECOVERY OF LAND, &C.**
**No. 1.**

1. The plaintiff is entitled to the possession of a farm and premises called Church Farm, in the township of Clement, in the County of Annapolis, which was let by the plaintiff to the defendant for the term of three years, from the 29th of September, 1879, which term has expired (*or* as tenant from year to year from the 29th September, 1875, which said tenancy was duly determined by notice to quit expiring on the 29th of September, 1881.)

The plaintiff claims possession and \$200 for mesne profits.

Place of trial, Annapolis.

Delivered \_\_\_\_\_ (Signed,) \_\_\_\_\_.

Appx. D.  
s. I.

No. 2.

1. The plaintiff is entitled to the possession of Black-acre, in the township of \_\_\_\_\_, (or of No. 2 Bridge street, Pictou,) in the County of \_\_\_\_\_.

2. On and before the \_\_\_\_\_ of \_\_\_\_\_, 18—, A. B. was seised in fee and in possession of the premises.

3. On the \_\_\_\_\_ of \_\_\_\_\_, 18—, the said A. B. died so seised, whereupon:

4. The estate descended to the plaintiff, his eldest son, and heir-at-law.

5. After the death of the said A. B., the defendant wrongfully took possession of the premises.

The plaintiff claims:

- (1.) Possession of the premises.
- (2.) Mesne profits from the \_\_\_\_\_ of \_\_\_\_\_.

Place of trial, \_\_\_\_\_.

(Signed) \_\_\_\_\_.

Delivered \_\_\_\_\_.

APPENDIX D.

FORMS OF DEFENCE TO BE USED PURSUANT TO ORDER XIX., RULE 5.

SECTION I.

GENERAL FORM.

18—. No. —.

In the Supreme Court.

Between \_\_\_\_\_, plaintiff, and \_\_\_\_\_, defendant.

Defence.

The defendant says that:

- 1. } (To be filled up in the manner exemplified in the
- 2. } following forms.)
- 3. }

(Signed) \_\_\_\_\_.

Delivered \_\_\_\_\_.

Appx. D.  
s. II.

---

## Counter-claim.

The defendant says that :

1. } (*To be filled up in the manner exemplified in the*  
2. } *following forms.*)

Delivered \_\_\_\_\_, (Signed) \_\_\_\_\_.

The defendant counter-claims.

Delivered \_\_\_\_\_, (Signed) \_\_\_\_\_.

## Defence and Counter-claim.

## Defence.

The defendant says :—

1. } (*To be filled up.*)  
2. }

## Counter-claim.

The defendant repeats paragraph 2 of his defence, and says that :

3. } (*To be filled up.*)  
4. }

The defendant counter-claims.

Delivered \_\_\_\_\_, (Signed) \_\_\_\_\_.

## SECTION II.

## TO ACTIONS OF AN EQUITABLE NATURE.

## APPENDIX C., SEC. II.

(*To Actions for Administration.*)

1. The defendant does not admit the plaintiff's claim.  
(*or*)

The defendant, *A. B.*, admits the plaintiff's claim, but not assets.

(*or*)  
The defendant, *C. D.*, admits assets, but not the plaintiff's claim.

2. The claim is barred by the Statute of Limitations.  
*(State which.)*
3. Payment was made by deceased.
4. The claim is fraudulent in the following particulars:  
*(Set out particulars.)*
5. The defendant is entitled to a set-off, of which the following are the particulars :  
*(Set out particulars.)*
6. The claim was released by deed dated — of —.
7. Notice was given and assets distributed under Cap. — of —.

APPX. D.  
S. II  
No. 1.

Particulars of the Notice.

Advertisements in the — of January 1, 1880.  
“ N. Y. Herald, Feb., 1881.  
“ London Times, Jan. 25, 1881.

*(Giving the titles of the newspapers and the dates of those in which the advertisement appeared.)*

8. The personal estate of the testator is sufficient to pay the plaintiff his debt if established.
9. The defendant is not heir-at-law or devisee of the deceased.

(Signed) — — —.

Delivered — — —.

**No. 1.**

*(To Actions for Foreclosure.)*

1. The defendant did not execute the mortgage.
2. The mortgage was not assigned to the plaintiff *(if more than one assignment is alleged say which is denied.)*
3. The debt is barred by the Statute of Limitations.
4. Payments have been made, viz:

10 July, 1874, \$1000.  
18 October, 1875, \$500.

5. The plaintiff took possession on the — of — and has received the rents ever since.
6. The plaintiff released the debt by deed, dated 1 June, 1882.



APPX. D.  
S. II.  
No. 2.

7. The defendant conveyed all his interest to A. B., by deed dated 25 November, 1880.

The defendant claims:—

- (1.) Account.
- (2.) Re-conveyance.

Delivered \_\_\_\_\_ (Signed) \_\_\_\_\_.

**No. 2.**

*(To same by alleged Second Incumbrancer, who claims Priority.)*

1. )
  2. )
  3. )
  4. )
  5. )
  6. )
- (As in preceding Form.)*

7. By a deed dated 1st June, 1880, the mortgagor, A. B., mortgaged the property in question to the defendant to secure \$5000, and interest at 5 per cent. per annum.

The defendant claims:—

1. A declaration of priority and foreclosure (and a receiver.)

Delivered \_\_\_\_\_ (Signed,) \_\_\_\_\_.

*(If the plaintiff claims payment of the mortgage debt, the defendant must, if he disputes his liability, show the grounds on which he does so, as in other cases of debt; or he can claim indemnity against the owner of the equity of redemption under Order XVI., Rule 49.)*

*(To Actions for Redemption.)*

1. The plaintiff's right to redeem is barred by the Statute of Limitations.—*(State which.)*

2. The plaintiff assigned all interest in the property to A. B.

3. The defendant by deed, dated the \_\_\_\_\_ day of \_\_\_\_\_, assigned all his interest in the mortgage debt and property comprised in the mortgage to A. B.

4. The defendant never took possession of the mortgaged property, or received the rents thereof.

APPX. D.  
S. II.  
No. 2.

*(If the defendant admits possession for a time only, he should state the time, and deny possession beyond what he admits.)*

(Signed,) \_\_\_\_\_.

Delivered \_\_\_\_\_.

*(To Actions for Specific Performance.)*

1. The defendant did not enter into the agreement.

2. A. B. was not the agent of the defendant *(if alleged by plaintiff.)*

3. The plaintiff has not performed the following conditions.—*(Conditions.)*

4. The defendants did not.—*(Alleged acts of part performance.)*

5. The plaintiff's title to the property agreed to be sold is not such as the defendant is bound to accept by reason of the following matters:—*(State why.)*

6. The Statute of Frauds has not been complied with.

7. The agreement is uncertain in the following respects—*(State them.)*

8. *(or)* The defendant has been guilty of delay ;

9. *(or)* The defendant has been guilty of fraud *(or misrepresentation)* ;

10. *(or)* The agreement is unfair ;

11. *(or)* The agreement was entered into by mistake.

The following are particulars of (8), (9), (10), (11), *(or as the case may be.)*

12. The agreement was rescinded under Conditions of Sale, No. 11, *(or, by mutual agreement,)*

(Signed,) \_\_\_\_\_.

Delivered \_\_\_\_\_.

*(In cases where damages are claimed and the defendant disputes his liability to damages, he must deny the agreement or the alleged breaches, or show whatever other grounds of defence he intends to rely on, e. g., Statute of Limitations, accord and satisfaction, release, fraud, &c.)*

Appx. D.  
B. III.

## SECTION III.

TO ACTIONS INCLUDED IN ORDER III., RULE 5, CLASSES  
A., B., C., D., E. AND F.

(To Actions on Bills of Exchange, Promissory Notes,  
or Checks.)

1. The defendant did not accept the bill.
2. The defendant did not make the note.
3. The defendant did not draw the check.
4. The defendant did not endorse to A. B.
5. The defendant (*or* A. B.,) did not endorse to the plaintiff.
6. The bill was not presented for payment.
7. The defendant had not due notice of dishonor.
8. The plaintiff was not the holder at the commencement of the action.
9. The bill was accepted (*or*, the note was made) for the accommodation of the defendant without consideration.
10. The bill was accepted for the accommodation of the drawer and indorsed to the plaintiff without consideration.
11. The bill was accepted and delivered to the drawer without consideration for the purpose of his getting it discounted for the defendant, and the drawer, in fraud of the defendant, and contrary to the said purpose, indorsed the bill to the plaintiff without consideration, (*or*, with notice of the said fraud, *or* overdue.)
12. The defendant was induced to accept by the fraud of the drawer, who indorsed to the plaintiff without consideration (*or*, with notice of the fraud, *or*, overdue.)  
Particulars of the fraud are as follows: The drawer on or about the 15th of May, 1882, falsely and fraudulently stated to the defendant that he had shipped 20 tons of pig iron for the defendant on board the "Ajax," which he had not done.
13. The defendant accepted the bill (*or*, made the note) for and on account of the price of 50 tons of coal to be delivered by the plaintiff to the defendant by the 1st of May, 1882, and the plaintiff failed to deliver the goods.
14. The bill (*or*, note, *or*, check) was rendered void after issue by a material alteration, viz., by the alteration of the date from the 21st of January to the 2nd January.

(Signed) \_\_\_\_\_

Delivered \_\_\_\_\_,

(To Actions for any Simple Contract Debts, other than Bills, Notes, or Checks.)

APPX. D.  
S. III.

1. The defendant did not order the goods.
2. The goods were not delivered to the defendant.
3. The price was not \$——.

(or)

4. } Except as to \$——, same as { 1.
5. } { 2.
6. } { 3.

7. The defendant (or, *A. B.*, the defendant's agent), satisfied the claim by payment before action to the plaintiff, (or, *C. D.*, the plaintiff's agent), on the —— of ——, 18—.

8. The defendant satisfied the claim by payment after action to the plaintiff on the —— day ——, 18—.

(Signed) —— ———.

Delivered ——.

—————

(To Actions on Bonds or Contracts under Seal, for Payment of a Liquidated Amount in Money.

1. The bond (or deed) is not the defendant's bond (or deed.)

2. The defendant made payment to the plaintiff, on the day according to the condition of the bond.

3. The defendant made payment to the plaintiff, after the day named and before action, of the principal and interest mentioned in the bond.

(Signed) —— ———.

Delivered ——.

—————

[In Actions on Guaranties, whether under Seal or not, where the Claim against the Principal is for a Debt or Liquidated Demand. Ord. III., Rule 5, Class (D.).]

1. The principal satisfied the claim by payment before action.

2. The defendant was released by the plaintiff giving time to the principal debtor, in pursuance of a binding agreement.

(Signed) —— ———.

Delivered ——.

Appx. D.  
s. III.

(To any Action of Debt.)

1. As to \$200 parcel of the money claimed, the defendant is entitled to set-off for goods sold and delivered by the defendant to the plaintiff. Particulars are as follows:—

1882, Jan. 25.	To 20 tons of — coal at \$4..	\$ 80 00
“ Feb. 1.	To 30 tons of — coal at \$4..	120 00

Total.....	\$200 00.
------------	-----------

2. As to the whole (*or*, as to \$——, parcel of the money claimed), the defendant made tender before action (*or*, on the day on which it fell due) of \$——, and has paid the same into Court.

(Signed) \_\_\_\_\_.

Delivered \_\_\_\_\_.

#### GENERAL DEFENCES.

1. On 5th April, 1882, a brown horse was delivered by the defendant to, and accepted by, the plaintiff in discharge of the alleged cause of action ;

(*Or*, on 5th April, 1882, an agreement between the plaintiff and the defendant, whereby it was agreed between the plaintiff and the defendant that the defendant should deliver the cargo of the “Mary” at Pugwash, instead of at Halifax, as per charter-party of 1st March, 1882, was accepted in discharge of the alleged cause of action.)

2. The defendant became bankrupt.

3. The plaintiff became bankrupt before action,<sup>o</sup> and the cause of action vested in the trustees of his property.

4. The defendant was covert at the time of making the alleged contract, (*or*, contracting the alleged debt.)

5. The defendant was an infant at the time of making the alleged contract (*or*, contracting the alleged debt.)

6. The defendant as to the whole action, (*or*, as to \_\_\_\_\_ of \$——, parcel of the money claimed, *or*, as to the plaintiff’s claim on the guarantee of the \_\_\_\_\_ of \_\_\_\_\_ 18——, (*or as the case may be*), has paid into Court \$——, and says that sum is enough to satisfy the plaintiff’s claim (*or*, the plaintiff’s claim herein pleaded to.)

7. The causes of action were released by deed dated the 1st of May, 1882, between the plaintiff of the first part and the defendant of the second part.

8. The contract was rescinded (*or* the defendant was exonerated by the plaintiff) before breach. Particulars are as follows:—An arrangement between the plaintiff and the defendant, made verbally on the 15th of April, 1882, (*or*, by letter from the defendant to the plaintiff and answer of the plaintiff dated the 14th and 15th April, 1882.)

9. The debt was barred by the Statute of Limitations, *(state which.)*

Appx. D.  
B. IV.

10. (17th) section of the Statute of Frauds has not been complied with.

(Signed) \_\_\_\_\_.

Delivered \_\_\_\_\_.

## SECTION IV.

TO ACTIONS FOR DAMAGES FOR BREACH OF CONTRACT OR DUTY.—APPENDIX C., SECT. IV.

1. The defendant did not contract (*or, promise, or agree*), as alleged.

2. The defendant did not receive the goods for the alleged purpose (*or, on the alleged terms.*)

3. The defendant did not receive the plaintiff as a passenger to be carried as alleged.

4. The defendant did not (*insert breaches denied.*)

5. The defendant was not ready and willing to accept and pay for the goods (*or, to deliver the goods, or, as the case may be.*)

6. There was contributory negligence on the part of the plaintiff.

7. The plaintiff did not pay or tender the money for the carriage.

8. The damage or loss occurred from the inherent vice (*or, bad condition when received*) of the goods (*or, horse, or, as the case may be.*)

9. The loss occurred by reason of the excepted perils mentioned in the charter-party, (*or, bill of lading*), that is to say, the perils of the seas, (*or, fire, or as the case may be.*)

10. The charter-party was cancelled pursuant to cancelling clause therein, the ships not having arrived at port of loading on or before 1st May, 1882.

11. The alleged liability of the defendant had ceased by reason of cesser clause in the charter-party, the cargo shipped having been worth more at the port of discharge than the freight or demurrage.

12. The loss was not by the perils insured against.

13. The plaintiff was not interested in the subject-matter of the insurance.

14. The ship was not seaworthy at commencement of risk (*or, voyage.*)

15. The plaintiff was not ready and willing to marry the defendant.

(Signed,) \_\_\_\_\_.

Delivered \_\_\_\_\_.

APPX. D.  
S. V.

## SECTION V.

TO ACTIONS CLAIMING INJUNCTIONS, DAMAGES, OR DECLARATIONS OF RIGHT, FOUNDED UPON WRONGS.

APPENDIX C., SECT. V.

*(To all Actions for Wrong.)*

1. Denial of the several acts (or, matters) complained of.

(Signed) \_\_\_\_\_.

Delivered \_\_\_\_\_.

*(To Actions for Detention or Conversion of Chattels.)*

1. The goods (or, chattels, or, as the case may be) were not the plaintiff's.

2. The goods were detained for a lien to which the defendant was entitled. Particulars are as follows:—

1882, May 3. To carriage of the goods claimed from  
London to Birmingham:—  
45 tons at 50c..... \$22 50

(Signed) \_\_\_\_\_.

Delivered \_\_\_\_\_.

*(To Actions for Personal Bodily Injuries, or Injuries to Carriages, Goods or Animals, by Trespass or Negligence.)*

1. The defendant did the acts complained of in necessary self-defence.

2. There was contributory negligence on the part of the plaintiff (or, the plaintiff's servant.)

(Signed) \_\_\_\_\_.

Delivered \_\_\_\_\_.

*(To Actions for Infringement of a Patent.)*

1. The defendant did not infringe the patent.

2. The invention was not new.

3. The plaintiff was not the first or true inventor.

4. The invention was not useful.

5. (*Denial of any other matter of fact affecting the validity of the patent.*)

APPX. D.  
S. V.

6. The patent was not assigned to the plaintiff.

(Signed) \_\_\_\_\_.  
Delivered \_\_\_\_\_.

(*Copyright.*)

1. The plaintiff is not the author (*assignee, &c., as the case may be.*)

2. The book was not registered.

3. The defendant did not infringe.

(Signed) \_\_\_\_\_.  
Delivered \_\_\_\_\_.

(*Trade-mark.*)

1. The trade mark is not the plaintiff's.

2. The alleged trade mark is not a trade mark.

3. The defendant did not infringe.

(Signed) \_\_\_\_\_.  
Delivered \_\_\_\_\_.

(*Light.*)

1. The plaintiff's lights are not ancient (*or deny his other alleged prescriptive rights.*)

2. The plaintiff's lights will not be materially interfered with by the defendant's buildings.

(*Nuisance.*)

3. The defendant denies that he or his servants pollute the water (*or, do what is complained of.*)

(*If the defendant claims the right by prescription, or otherwise, to do what is complained of, he must say so, and must state the grounds of his claim, i. e., whether by prescription, grant, or what.*)

4. The plaintiff has been guilty of laches, of which the following are particulars:

1870. Plaintiff's mill began to work.

1871. Plaintiff came into possession.

1883. First complaint.



Appx. D  
s s. VI, VII

5. As to the plaintiff's claim for damages, the defendant will rely on the above grounds of defence, and says that the acts complained of have not produced any damage to the plaintiff. (*If other grounds are relied on, they must be stated, e. g., the Statute of Limitations as to past damage.*)

(Signed) \_\_\_\_\_  
Delivered \_\_\_\_\_.

(*To Action for Seduction.*)

1. The said *A. B.* was not the servant of the plaintiff.
2. The defendant did not seduce and carnally know the said *A. B.*

(Signed) \_\_\_\_\_  
Delivered \_\_\_\_\_.

## SECTION VI.

TO ACTIONS FOR RECOVERY OF LAND. APPENDIX C., SECT. VI.

1. The defendant is in possession of the premises by himself or his tenant.
2. The defendant has no notice to quit.

(Signed) \_\_\_\_\_  
Delivered \_\_\_\_\_.

## SECTION VII.

COUNTER-CLAIMS.

The defendant lent \$500 to the plaintiff on 1st May, 1882.  
The defendant counter-claims \$500.

1. The defendant has suffered damage by the plaintiff's breach of a contract for the sale and delivery by the plaintiff to the defendant of 5,000 tons of steam coal at \$4.00 per ton F. O. B. at Pictou, by equal monthly deliveries over the first five months of 1882.

2. The April and May instalments were not delivered.

Particulars of the damages:

Difference between market price in April and May, and the contract price, \$0.50 per ton on 2,000 tons.....	\$1000 00
The defendant counter-claims \$1000.00.	

(Signed) \_\_\_\_\_  
Delivered \_\_\_\_\_.

APPENDIX E.

Appx. E.  
s. I.

FORMS OF REPLY, &c., TO BE USED PURSUANT TO  
ORDER XIX., RULE 5.

SECTION I.

(General Form.)

18—. (Here put the letter and number.)

In the Supreme Court.

Between ———, Plaintiff,  
and  
————, Defendant.

Reply.

The plaintiff, as to the defence, says that—

1. ———.
2. ———.

The plaintiff, as to the counter-claim, says that—

1. ———.
2. ———.

(Signed) ———.

Delivered ———.

Reply.

(In Action on Guarantee to which defence raised of time  
given to Principal, and Counter-claim, for Non-  
delivery of Goods.)

The plaintiff, as to the defence, says that—

1. He joins issue.
2. The agreement giving time to the principal expressly reserved remedies against the surety.

The plaintiff, as to the counter-claim, says that—

1. The defendant was not ready and willing to accept and pay for the goods.

(Signed) ———.

Delivered ———.

APPX. E.  
S. II

SECTION II.

EXAMPLE OF A STATEMENT OF CLAIM, DEFENCE, AND  
REPLY.

18--. (*Here put the letter and number.*)

In the Supreme Court. Between *A. B.*, Plaintiff,  
and  
*C. D.*, Defendant.

Statement of Claim.

The plaintiff's claim is for work done and materials provided by the plaintiff for the defendant at his request.

Particulars :

1882. January 1st to 31st May. To rebuilding house at Dartmouth, as per contract, dated the 24th December, 1881.....	\$3000 00
To extras, as per account delivered..	500 00
	\$3500 00
Paid on account.....	2000 00
	\$1500 00

The plaintiff also seeks to recover interest on the above balance from the 31st May, 1882, till payment or judgment.

Place of trial, \_\_\_\_\_.

(Signed,) \_\_\_\_\_.

Delivered the \_\_\_\_\_ of \_\_\_\_\_, 18 \_\_\_\_.

(*Heading as in General Form.*)

Defence and Counter-claim.

Defence.

The defendant says that :—

1. Except as to \$200, parcel of the money claimed, the architect did not grant his certificate pursuant to the contract.

2. As to \$200, parcel of the money claimed, the defendant brings (or has brought) into Court \$200, and says that sum is enough to satisfy the plaintiff's claim herein pleaded to.

APPX. E.  
S. II.

Counter-claim.

The defendant says that :—

1. The contract contained a clause whereby it was provided that the plaintiff should complete the works by the 31st of March, 1882, or in default pay to the defendant \$4 a day for every subsequent day during which the works should remain unfinished, and they so remained unfinished for 61 days to the 31st of May.

The defendant counter-claims \$244.

(Signed,) \_\_\_\_\_.

Delivered the 22nd of January, 1883.

\_\_\_\_\_  
(Heading as in General Form.)

REPLY.

The plaintiff says that—

1. As to the first paragraph of the defence, he joins issue.

2. As to the second paragraph thereof, the plaintiff accepts the \$—— in satisfaction.

The plaintiff as to counter-claim says that—

3. The liquidated damages were waived by ordering extras and material alterations in the works.

4. The defendant waived the liquidated damages by preventing the plaintiff from having access to the premises till a week after the agreed time.

(Signed,) \_\_\_\_\_.

Delivered the —— of ——, 1884.

Appx. E.  
s III.  
Nos. 1, 2.

## SECTION III.

## DEFENCE INCLUDING AN OBJECTION IN POINT OF LAW.

**No. 1.***(Heading.)*

Defence.

*(To Action on Guaranty for Price of Goods.)*

The defendant says that—

1. The goods were not supplied to *E. F.* on the guarantee.

2. The defendant will object that the guarantee discloses a past consideration on the face of it.

(Signed) \_\_\_\_\_.

Delivered \_\_\_\_\_.

**No. 2.***(Heading.)*

Defence.

*(To Action for Verbal Slander, actionable only by reason of Special Damage.)*

The defendant says that—

1. The defendant did not speak or publish the words.

2. The words did not refer to the plaintiff.

3. The defendant will object that the special damage stated is not sufficient in point of law to sustain the action.

(Signed) \_\_\_\_\_.

Delivered \_\_\_\_\_.

**No. 3.**

Appx. F.  
No. 1.

(*Heading.*)

Defence.

*(To Action on a Marine Policy, stated to contain Clauses that the Policy was to be Proof of interest, and without Benefit of Salvage.)*

The defendant says that—

1. The defendant did not make the policy.
2. The loss was not by the perils insured against.
3. The defendant will object that the policy was avoided by 19 Geo. II. c. 37, s. 1.

Delivered \_\_\_\_\_, (Signed) \_\_\_\_\_.

---

**APPENDIX F.**

**FORMS OF JUDGMENT.**

**No. 1.**

DEFAULT OF APPEARANCE AND DEFENCE IN CASE OF LIQUIDATED DEMAND.

18—. (*Here put the letter and number.*)

In the Supreme Court.

Between *A. B.*, plaintiff,  
and  
*C. D.*, and *E. F.*, defendants.

30th November, 18—.

The defendants (*or* the defendant *C. D.*) not having appeared to the writ of summons herein (*or* not having delivered any defence), it is this day adjudged that the plaintiff recover against the said defendant \$—, and costs, to be taxed.

Appx. F.  
Nos. 2—4.

**No. 2.**

INTERLOCUTORY JUDGMENT IN DEFAULT OF APPEARANCE OR  
DEFENCE WHERE DEMAND UNLIQUIDATED.

*(Heading as in Form 1.)*

The — day of —, 18—.

No appearance having been entered to the writ of summons (*or* no defence having been delivered by the defendant herein.)

It is this day adjudged that the plaintiff recover against the defendant the value of the goods (*or* damages *or* both, *as the case may be*) to be assessed.

**No. 3.**

JUDGMENT IN DEFAULT OF APPEARANCE IN ACTION FOR  
RECOVERY OF LAND.

*(Heading as in Form 1.)*

30th November, 18—.

No appearance having been entered to the writ of summons herein, it is this day adjudged that the plaintiff recover possession of the land in the indorsement on the writ described as —.

**No. 4.**

JUDGMENT IN DEFAULT OF APPEARANCE AND DEFENCE  
AFTER ASSESSMENT OF DAMAGES.

*(Heading as in Form 1.)*

30th November, 18—.

The defendants not having appeared to the writ of summons herein (*or* not having delivered any defence), and a writ of inquiry dated —, 1884, having been issued directed to the sheriff of —, to assess the damages which the plaintiff was entitled to recover, and the said sheriff having by his return dated the — 18—, returned that the said damages have been assessed at \$—, it is adjudged that the plaintiff recover \$—, and costs to be taxed.

**No. 5.**Appx. F.  
Nos. 5, 7.

## JUDGMENT AFTER APPEARANCE AND ORDER UNDER ORDER

## XIV., RULE 1.

*(Heading as in Form 1.)*

The —— day of ——.

The defendant having appeared to the writ of summons herein, and the plaintiff having by the order of ——, dated the —— day of —— 18——, obtained leave to sign judgment under the Rules of the Supreme Court, Order XIV., Rule 1, for *(recite order)*

It is this day adjudged that the plaintiff recover against the defendant \$—— (*or, possession of the land in the indorsement on the writ described as ——*) and costs to be taxed.

—————  
The above costs have been taxed and allowed at \$——.

**No. 6.**

## JUDGMENT AT TRIAL BY JUDGE WITHOUT A JURY.

*(Heading as in Form 1.)*

This action coming on for trial (the —— day of —— and) this day before —— in the presence of counsel for the plaintiff and the defendants (*or, if some of the defendants do not appear, for the plaintiff and the defendant C. D., no one appearing for the defendants E. F. and G. H., although they were duly served with notice of trial as by the affidavit of ——, filed —— the —— day —— of —— appears*), upon hearing the probate of the will of ——, the answers of the defendants *C. D., E. F., and G. H.*, to interrogatories, the admission in writing, dated —— and signed by (Mr. ——, the solicitor for) the plaintiff *A. B.*, and by (Mr. ——, the solicitor for) the defendant *C. D.*, the affidavit of ——, filed the —— day of ——, the affidavit of —— filed the —— day of ——, the evidence of ——, taken on their oral examination at the trial, and an exhibit marked X., being an indenture dated, &c., and made between (parties), and what was alleged by counsel on both sides: This Court doth declare, &c.

And this Court doth order and adjudge, &c.



Appx. F.  
Nos. 7—9.

**No. 7.**

## JUDGMENT AFTER TRIAL WITH A JURY.

(*Heading as in Form 1.*)

15th November, 18—.

The action having on the 12th and 13th November, 18—, been tried before the Honorable Mr. Justice ———, with a special jury of the county of ———, and the jury having found (*state findings*) and the said Mr. Justice ——— having ordered that judgment be entered for the plaintiff for \$—— and costs (*or as the case may be*): Therefore, it is adjudged that the plaintiff recover against the defendant \$——, and \$—— for his costs (*or that the plaintiff recover nothing against the defendant, and that the defendant recover against the plaintiff \$—— for his costs of defence, or as the case may be.*)

---

**No. 8.**

## JUDGMENT AFTER TRIAL BEFORE REFEREE.

(*Heading as in Form 1.*)

30th November, 18—.

The action having on the 27th November, 18—, been tried before X. Y., Esq., an official (*or special*) referee, and the said X. Y. having found (*or having ordered that judgment may be entered*) (*state substance of referee's certificate*), it is this day adjudged that ———.

---

**No. 9.**

## JUDGMENT AFTER TRIAL OF QUESTIONS OF ACCOUNT BY REFEREE.

(*Heading as in Form 1.*)

The —— day of ——, 18—.

The questions of account in this action having been referred to ——, and he having found that there is due from the —— to the —— the sum of \$——, and directed that the —— do pay the costs of the reference.

It is this day adjudged that the —— recover against the —— \$—— and costs to be taxed.

The above costs have been taxed and allowed at \$——.

**No. 10.**Appx. F.  
Nos. 10-12.

## JUDGMENT UPON MOTION FOR JUDGMENT.

*(Heading as in Form 1.)*

30th November, 18—.

This day before — Mr. X. of counsel for the plaintiff (or as the case may be), moved on behalf of the said — (state judgment moved for), and the said Mr. X. having been heard of counsel for — and Mr. Y., of counsel for —, the Court adjudge —.

**No. 11.**

## JUDGMENT AFTER TRIAL BY COURT WITHOUT JURY.

*(Heading as in Form 1.)*

This action having on the — day of — 18—, been tried before — and the said — on the — day of — 18—, having ordered that judgment be entered for the — for \$—.

It is this day adjudged that the — recover from — the — \$— and costs to be taxed.

The above costs have been taxed and allowed at \$—.

Judgment entered the — day of —, 18—.

**No. 12.**

## JUDGMENT IN PURSUANCE OF ORDER.

*(Heading as in Form 1.)*

Pursuant to the order of — dated — 18— whereby it was ordered — and default having been made —.

It is this day adjudged that the plaintiff recover against the said defendant \$— and costs to be taxed.

The above costs have been taxed and allowed at \$—.

Appx. F.  
Nos. 13-15.

**No. 13.**

JUDGMENT FOR DEFENDANT'S COSTS ON DISCONTINUANCE.

*(Heading as in Form 1.)*

The — day of —, 18—.

The plaintiff having by a notice in writing — dated the — day of —, 18—, wholly discontinued this action (*or withdrawn his claim in this action for*) (*or withdrawn so much of his claim in this action as relates to —, or as the case may be.*)

It is this day adjudged that the defendant recover against the plaintiff costs to be taxed.

The above costs have been taxed and allowed at \$—.

**No. 14.**

JUDGMENT FOR PLAINTIFF'S COSTS AFTER CONFESSION OF DEFENCE.

*(Heading as in Form 1.)*

The — day of —, 18—.

The defendant in his defence herein having alleged a ground of defence which arose after the commencement of this action, and the plaintiff having on the — day of —, 18—, delivered a confession of that defence:

It is this day adjudged that the plaintiff recover against the defendant costs to be taxed.

The above costs have been taxed and allowed at \$—.

**No. 15.**

JUDGMENT FOR COSTS AFTER ACCEPTANCE OF MONEY PAID INTO COURT.

*(Heading as in Form 1.)*

The — day of —, 18—.

The defendant having paid into court in this action the sum of — in satisfaction of the plaintiff's claim, and the plaintiff having by his notice dated the — day of

\_\_\_\_\_, 18—, accepted that sum in satisfaction of his entire cause of action, and the plaintiff's costs herein having been taxed, and the defendant not having paid the same within \_\_\_\_\_ after the said taxation: APPX. F.  
Nos. 16, 17.

It is this day adjudged that the plaintiff recover against the defendant costs to be taxed.

The above costs have been taxed and allowed at \$——.

**No. 16.**

JUDGMENT WHERE NO JUDGMENT ENTERED AT TRIAL BY JURY.

*(Heading as in Form 1.)*

The \_\_\_\_ day of \_\_\_\_\_, 18—.

This action having on the \_\_\_\_\_, 18—, been tried before \_\_\_\_\_ and a \_\_\_\_\_ jury of the \_\_\_\_\_ of \_\_\_\_\_, and the jury having found \_\_\_\_\_ and the \_\_\_\_\_ not having thought fit to order any judgment to be entered,

Now on motion before the Court for judgment on behalf of the \_\_\_\_\_, the Court having \_\_\_\_\_:

It is this day adjudged that the \_\_\_\_\_ recover against the \_\_\_\_\_ the sum of \$—— and costs to be taxed.

The above costs have been taxed and allowed at \$——.  
Judgment entered the \_\_\_\_ day of \_\_\_\_\_, 18—.

**No. 17.**

JUDGMENT ON MOTION AFTER TRIAL OF ISSUE.

*(Heading as in Form 1.)*

The \_\_\_\_ day of \_\_\_\_\_, 18—.

The issues or questions of fact arising in this action (*or cause, or matter*) by the order dated the \_\_\_\_ day of \_\_\_\_\_ ordered to be tried before \_\_\_\_\_, having on the \_\_\_\_ day of \_\_\_\_\_ been tried before \_\_\_\_\_ and the \_\_\_\_\_ having found \_\_\_\_\_,

Now on motion before the Court for judgment on behalf of \_\_\_\_\_, the Court having \_\_\_\_\_:

Appx. G.  
Part I.  
No. 1.

It is this day adjudged that the ——— recover against the ——— the sum of \$—— and costs to be taxed.

The above costs have been taxed and allowed at \$——. Judgment entered the ——— day of ———, 18—.

---

**No. 18.**

SATISFACTION PIECE.

(*Heading as in Form 1.*)

Satisfaction is acknowledged of the judgment entered between the said plaintiff and the said defendant on the ——— day of ———, 18—, for ——— and ——— costs.

Dated the ——— day of ———, 18—.

(Signed,) ———.

---

APPENDIX G.

---

PART I.

---

FORMS OF PRÆCIPE.

**No. 1.**

OF EXECUTION.

18—. (*Here put the letter and number.*)

In the Supreme Court.

Between A. B., Plaintiff,  
and  
C. D., and others, Defendants.

Seal a writ of execution directed to the Sheriff of ———, to levy against C. D. the sum of \$—— and interest thereon at the rate of \$6 per centum per annum from the ——— day of ——— (and \$—— costs) to ——— Judgment (or order) dated ——— day of ———.

X. Y, Solicitor for (*party on whose behalf writ is to issue.*)

**No. 2.**

Appx. G.  
Part I.  
Nos. 2-5.

## OF WRIT OF SEQUESTRATION.

*(Heading as in Form 1.)*

Seal a writ of sequestration against *C. D.* ----- for not ----- at the suit of *A. B.*, directed to (name of Commissioners.)

Order dated ----- day of -----,

---

**No. 3.**

## OF WRIT OF POSSESSION.

*(Heading as in Form 1.)*

Seal a writ of possession directed to the Sheriff of ----- to deliver possession to *A. B.*, of -----.

Judgment dated ----- day of -----.

---

**No. 4.**

## OF WRIT OF DELIVERY.

*(Heading as in Form 1.)*

Seal a writ of delivery directed to the Sheriff of ----- to make a delivery to *A. B.*, of -----.

---

**No. 5.**

## OF WRIT OF ATTACHMENT.

*(Heading as in Form 1.)*

Seal in pursuance of order dated ----- day of -----, an attachment directed to the Sheriff of -----, against *C. D.*, for not delivering to *A. B.*

Appx. G.  
Part I.  
Nos. 6-8.

**No. 6.**

OF DISTRINGAS AGAINST EX-SHERIFF.

*(Heading as in Form 1.)*

Seal a writ of distringas *nuper vicecomitem quod venditori exponat*, directed to the Sheriff of ———, to sell the goods and ——— of ———, taken under a writ of execution in this action issued the — day — 18—.

Dated the — day of ———, 18—.

(Signed) ———.

(Address) ———,

Solicitor for the ———.

**No. 7.**

OF INQUIRY.

*(Heading as in Form 1.)*

Seal a writ of inquiry directed to the Sheriff of ———, to assess the damages in this action.

Judgment dated ———.

Dated the — day of ———, 18—.

(Signed) ———.

(Address) ———,

Solicitor for the ———.

**No. 8.**

OF CERTIORARI.

*(Heading as in Form 1.)*

Seal in pursuance of order dated ———, a writ of certiorari directed to ———.

Dated the — day of ———, 18—.

(Signed) ———.

(Address) ———,

Solicitor for the ———.

**No. 9.**

APPX. G.  
Part I.  
Nos. 9, 10.

OF PROHIBITION.

18—. (*Here put the letter and number.*)

In the Supreme Court.

In the matter of a certain ——— now depending in the Court

Between ———, Plaintiff,  
and  
———, Defendant.

Seal a writ of prohibition directed to the Judge of the above-named Court and to the above-named plaintiff to prohibit them from further proceeding in the said ———.

Dated the — day of ———, 18—.

(Signed) ———.

(Address) ———,

Solicitor for the ———.

**No. 10.**

OF MANDAMUS.

(*Heading as in Form 1.*)

Seal in pursuance of order dated ———, a writ of mandamus directed to ———, commanding ——— to ——— returnable

Dated the — day of ———, 18—.

(Signed) ———.

(Address) ———,

Solicitor for the ———.



Appx G.  
Part I.  
Nos. 11—13.

**No. 11.**

## OF HABEAS CORPUS AD TESTIFICANDUM.

(Heading as in Form 1.)

Seal in pursuance of order dated —— a writ of *habeas corpus ad testificandum* directed to the ——, to bring —— before ——.

Dated the —— day of ——, 18—.

(Signed) ——.

(Address) ——.

Solicitor for the ——.

---

**No. 12.**

## OF COMMISSION TO EXAMINE WITNESSES.

(Heading as in Form 1.)

Seal in pursuance of order dated —— a writ in the nature of a mandamus or commission to examine witnesses, directed to ——.

Dated the —— day of ——, 18—.

(Signed) ——.

(Address) ——.

Solicitor for the ——.

---

**No. 13.**

## OF COMMISSION OF PARTITION.

(Heading as in Form 1.)

Seal in pursuance of order dated —— a commission of partition directed to —— returnable

Dated the —— day of ——, 18—.

(Signed) ——.

(Address) ——.

Solicitor for the ——.

**No. 14.**

OF AMENDED SUMMONS.

Appx. G.  
Part I.  
Nos. 14-16.

*(Heading as in Form 1.)*

Amend in pursuance of order (*or fiat*) dated ——— the writ of summons in this action by (*set out amendments when required.*)

Dated the ——— day of ———, 18—.

(Signed) ———.

(Address) ———.

Solicitor for the ———.

**No. 15.**

OF RENEWED SUMMONS.

*(Heading as in Form 1.)*

Seal in pursuance of order dated ———, a renewed writ of summons in this action, indorsed as follows:

Dated the ——— day of ———, 18—.

(Signed) ———.

(Address) ———.

Solicitor for the ———.

**No. 16.**

OF SUBPŒNA.

*(Heading as in Form 1.)*

Seal writ of subpœna ——— on behalf of the ——— directed to ——— returnable

Dated the ——— day of ———, 18—.

(Signed) ———.

(Address) ———.

Solicitor for the ———.

Appx. G.  
Part I.  
Nos. 17—19.

**No. 17.**

## ENTRY OF ACTION FOR TRIAL.

*(Heading as in Form 1.)*

Enter this action for trial ———.

Dated the ——— day of ———, 18—.

(Signed,) ———.

(Address,) ———.

**No. 18.**

## ENTRY OF APPEAL.

*(Heading as in Form 1.)*

Enter this appeal from the order (*or* judgment) of ———  
in this action, dated the ——— day of ———, 18—.

Dated the ——— day of ———, 18—.

(Signed,) ———.

(Address,) ———.

**No. 19.**

## ENTRY FOR ARGUMENT GENERALLY.

*(Heading as in Form 1.)*

Set down for argument the ———.

Dated the ——— day of ———, 18—.

(Signed,) ———.

(Address,) ———.

**No. 20.**

Appx. G.  
Part I.  
Nos. 20, 21.

ENTRY OF SPECIAL CASE.

*(Heading as in Form 1.)*

Set down the \_\_\_\_\_ dated the \_\_\_\_\_ day of \_\_\_\_\_, 18—, of Mr. \_\_\_\_\_, the \_\_\_\_\_ referee in this \_\_\_\_\_ for hearing as a special case.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18—.

(Signed,) \_\_\_\_\_.

(Address,) \_\_\_\_\_.

**No. 21.**

MEMORANDUM OF SERVICE OF NOTICE OF JUDGMENT.

*(Heading as in Form 1.)*

Enter memorandum of service of notice of judgment made in this action, and dated the \_\_\_\_\_ day of \_\_\_\_\_, 18—, on the undermentioned persons, viz. :—

Name of Party Served.	Date of Service.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18—.

(Signed,) \_\_\_\_\_.

(Address,) \_\_\_\_\_.

Appx. H.  
No. 1.

## No. 22.

## MEMORANDUM OF NOTICE OF JUDGMENT.

Take notice that from the time of the service of this notice you (*or as the case may be*, the infant or person of unsound mind) will be bound by the proceedings in the above cause in the same manner as if you (*or the said infant or person of unsound mind*) had been originally made a party and that you (*or the said infant or person of unsound mind*) may, on entering an appearance at the Prothonotary's office at ———, attend the proceedings under the within mentioned judgment (*or order*) and that you (*or the said infant or person of unsound mind*) may within one month after the service of this notice apply to the Court to add to the judgment (*or order*).

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---

 APPENDIX H.

---

 No. 1.

## WRIT OF DELIVERY.

18—. (*Here put the letter and number.*)

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

VICTORIA, by the Grace of God, &c. To the Sheriff of ——— greeting: We command you, that without delay you cause the following chattels, that is to say (*here enumerate the chattels recovered by the judgment or order for the return of which execution has been ordered to issue*), to be returned to A. B., which the said A. B. lately in our Supreme Court recovered against C. D. (*or C. D. was ordered to deliver to the said A. B.*) in an action in the said Court.\* And we further command you, that if the said chattels cannot be found in your bailiwick, you distrain the said C. D. by all his lands and chattels in your bailiwick, so that neither the said C. D. nor any one for him do lay hands on the same until the said C. D. render to the said A. B. the said chattels.†

And in what manner you shall have executed this, our writ, make appear to us in our Court aforesaid, immediately after the execution hereof.

And have you there then this writ.

Issued, &c.

No. 2.

Appx. H.  
No. 2.

*The like, but instead of a distress until the chattel is returned, commanding the Sheriff to levy on defendant's goods the assessed value of it.*

(Proceed as in the preceding form until the\*, and then thus:) And we further command you, that if the said chattels cannot be found in your bailiwick, of the goods and chattels of the said *C. D.* in your bailiwick you cause to be made — \$ — (the assessed value of the chattels.)† And in what manner, &c.

And have you there then this writ.

Issued, &c.

(If in either of the preceding Forms it is wished to include damages, costs, and interest, proceed to the† and continue thus:)

And we further command you that of the goods and chattels of the said *C. D.*, in your bailiwick, you cause to be made the sum of \$ — (damages.) And also interest thereon at the rate of \$6 per centum per annum, from the — day of —, which said sum of money and interest were in the said action by the judgment therein (or by order) dated the — day of —, adjudged (or ordered) to be paid by the said *C. D.* to *A. B.*, together with certain costs in the said judgment (or order) mentioned, and which costs have been taxed and allowed at the sum of \$ —. And that of the goods and chattels of the said *C. D.* in your bailiwick you further cause to be made the sum of \$ — (costs), together with interest thereon at the rate of \$6 per centum per annum from the — day of —, and that you have that money and interest before us in our Court immediately after the execution hereof to be paid to the said *A. B.*, in pursuance of the said judgment (or order.)

And in what manner, &c.

And have you there then this writ.

Issued, &c.

Appx. H.  
Nos. 3, 4.

---

**No. 3.**

## WRIT OF ATTACHMENT. (PERSON.)

(*Heading as in Form 1.*)

VICTORIA, by the Grace of God, &c. To the Sheriff of  
———, greeting.

We command you to attach *C. D.*, so as to have him before us in the Supreme Court wheresoever the said Court shall then be, there to answer to us, as well touching a contempt which he it is alleged hath committed against us, as also such other matters as shall be then and there laid to his charge, and further to perform and abide such order as our said Court shall make in this behalf, and hereof fail not, and bring this writ with you.

Issued, &c.

---

**No. 4.**

## WRIT OF SEQUESTRATION.

(*Heading as in Form 1.*)

Victoria, by the Grace of God, &c. To (names of not less than four Commissioners) greeting.

Whereas, lately in the Supreme Court in a certain action there depending, wherein *A. B.* is plaintiff and *C. D.* and others are defendants (*or in a certain matter then depending, intituled "In the matter of E. F.," as the case may be*) by a judgment (*or order, as the case may be*) of our said Court made in the said action (*or matter*), and bearing date the —— day of ——, 18—, it was ordered that the said *C. D.* should (pay into Court to the credit of the said action the sum of \$——, *or as the case may be.*) Know ye, therefore, that we, in confidence of your prudence and fidelity, have given, and by these presents do give to you, or any three or two of you, full power and authority to enter upon all the messuages, lands, tenements, and real estate whatsoever of the said *C. D.*, and to collect, receive, and sequester into your hands not only all the rents and profits of his said messuages, lands, tenements, and real estate, but also all his goods, chattels, and personal estate whatsoever; and, therefore, we command you, or any three or two of you, that you do at certain, proper and convenient

days and hours, go to and enter upon all the messuages, lands, tenements, and real estates of the said *C. D.*, and that you do collect, take, and get into your hands not only the rents and profits of his said real estate, but also all his goods, chattels, and personal estate, and detain and keep the same under sequestration in your hands until the said *C. D.* shall (pay into Court to the credit of the said action the sum of \$——, or as the case may be), clear his contempt, and our said Court make other order to the contrary.

Appx. H.  
No. 5.

Issued, &c.

No. 5.

DISTRINGAS AGAINST EX-SHERIFF.

(Heading as in Form 1.)

Victoria, by the Grace of God, &c., to the Sheriff of ——, greeting.

We command you that you distrain —— ——, late Sheriff of your county aforesaid, by all his lands and chattels in your bailiwick, so that neither he nor anyone by him do lay hands on the same until you shall have another command from us in that behalf, and that you answer to us for the issues of the same, so that the said —— expose for sale and sell or cause to be sold for the best price that can be gotten for the same, those goods and chattels which were of —— in your bailiwick, to the value of \$——\*, ——the sum of \$—— which lately before us in our Supreme Court in a certain action wherein —— plaintiff and —— defendant —— by a† —— of our said Court bearing date the —— day of ——, was‡ —— to be paid by the said —— to the said —— and of the sum of \$——, the amount at which the costs in the said† —— mentioned have been taxed and allowed, and of interest on the said sum of \$—— at the rate of \$6 per centum per annum from the —— day of ——, and on the said sum of \$—— at the same rate from the —— day of ——, which goods and chattels he lately took by virtue of our writ, and which remain in his hands for want of buyers, as the said late Sheriff hath lately returned to us in our said Court. And have the money arising from such sale before us in our said Court immediately after the execution hereof, to be paid to the said ——. And have there then this writ.

Issued, &c.

\* "The amount of," or "Part of."  
† "Judgment," or "order."  
‡ "Adjudged," or "ordered."



Appx. H.  
Nos. 6, 7.

No. 6.

WARRANT TO ARREST WITNESS.

(*Heading as in Form 1.*)

To the Sheriff of ——— :

Whereas, it has been made to appear to me that *E. F.* is a necessary and material witness on behalf of the ———, and has been duly served with a subpoena, and paid or tendered his fees for travelling and attendance as a witness, and refuses or neglects to attend to give evidence. These are, therefore, to command you forthwith to apprehend the said *E. F.*, and to bring him before ——— for the purpose of giving evidence in such cause, and to be further dealt with according to law

Given under my hand and seal this ——— day of ———, 18—.

(Signed,) ———.

No. 7.

WRIT OF EXECUTION (AS HERETOFORE KNOWN.)

(*Heading as in Form 1.*)

Victoria, by the Grace of God, &c.

To the Sheriff of the County of ———, or to any other of our Sheriffs, greeting.

Whereas, ——— by the consideration of our Supreme Court at ——— on the ——— day of ———, A. D. 18—, recovered judgment against ———, of ———, in the county of ———, for the sum of ——— dollars and ——— cents debt or damage, and the sum of ——— dollars and ——— cents costs of suit. We command you, therefore, ——— that of the goods, chattels, lands or tenements of the said ——— within your precinct, you cause to be paid and satisfied unto the said ——— at the value thereof in money, the aforesaid sums being ——— dollars and ——— cents, and thereof also to satisfy yourself for your own fees; and for want of goods, chattels, lands or tenements of the said ——— to be, by ——— shown unto you, or found within your precinct, to the acceptance of the said ——— to satisfy the sums aforesaid: We command you to take the bod of the said

— — — —, and commit unto our gaol in your bailiwick, and detain in your custody within our said gaol until he pay the full sums above mentioned, with your fees, or that he be discharged by the said — — — —, the creditor or otherwise, according to law. Whereof fail not, and make due return of this writ unto our said — — — — Court at — — — —.

APPX. H.  
No. 8.

Issued this — — — — day of — — — —, A. D. 18—.

Solicitor of — — — —.

(To be indorsed with instructions as heretofore, and as in the Rules provided.)

WRIT OF EXECUTION ON ORDER FOR COSTS.

(*Heading as in Form 1.*)

Victoria, by the Grace of God, &c.

To the Sheriff, &c.

Whereas, — — — — by an order of — — — — (or our Supreme Court at — — — —) on the — — — — day of — — — —, A. D. 18—, — — — — is entitled to be paid by — — — —, of — — — —, in the County of — — — —, the sum of — — — — dollars and — — — — cents.

We command you therefore, &c., (*as in preceding form and indorsed with the like indorsement.*)

No. 8.

WRIT OF POSSESSION.

(*Heading as in Form 1.*)

Victoria, by the Grace of God, &c.

To the Sheriff of — — — —, greeting :

Whereas lately in our Supreme Court by a judgment, (*A. B. recovered*) or (*E. F. was ordered to deliver to A. B.*) possession of all that — — — — with the appurtenances in your bailiwick: Therefore we command you that you enter the same, and without delay you cause the said *A. B.* to have possession of the said land and premises with the appurtenances, and in what manner, &c.

And have you there then this writ.

Issued, &c.

Appx. H.  
Nos. 9, 10.

**No. 9.**

## WRIT OF ATTACHMENT (ABSCONDING DEBTOR.)

(*Heading as in Form 1.*)

Victoria, by the Grace of God, &c.

To the Sheriff of ———, greeting :

We command you to attach the goods and chattels or the estate of ———, an absent or absconding debtor, to the value of ———, to respond the judgment which may be obtained by ———, who has taken proceedings against the said ——— as an absent or absconding debtor, in our Supreme Court at ———, and we do command you that immediately after the execution hereof, you do return this writ into our Supreme Court at ——— together with your doings thereon, and the day of execution.

Issued this ——— day of ———, A. D., 18—.

Plaintiff's Solicitor, ——— ———.

**No. 10.**

## SUMMONS FOR AGENT (ABSCONDING DEBTOR.)

(*Heading as in Form 1.*)

Victoria, by the Grace of God, &c.,

To the Sheriff, &c.

We command you to summon ———, the agent or trustee of ———, late of ———, an absent or absconding debtor, to appear in the Supreme Court at ———, within fifteen days after the service of this writ, to declare, discover and disclose what goods, effects, or credits of the said ——— were in ——— hands or possession, or under ——— management or control at the time of the service of this writ upon ———, in a suit prosecuted by ——— against the said ———, as an absent or absconding debtor, in our said Court at ———.

Issued this ——— day of ———, A. D., 18—.

Solicitor of plaintiff, ——— ———.

APPENDIX J.

Appx J  
Nos. 1, 2.

FORMS OF SUBPŒNA, &c.

No. 1.

SUBPŒNA AD TESTIFICANDUM (GENERAL FORM.)

18.— (*Here put the letter and number.*)

In the Supreme Court.

Between ———, plaintiff,  
and  
————, defendant

Victoria, by the Grace of God, &c.

To (*the names of three witnesses may be inserted*)  
greeting: We command you to attend before ——— at  
—— on — day the — day of ——— 18—, at the  
hour of — in the —noon, and so from day to day,  
until the above cause is tried, to give evidence on behalf  
of the plaintiff (*or defendant.*)

Issued, &c.

No. 2.

HABEAS CORPUS AD TESTIFICANDUM.

(*Heading as in Form 1.*)

Victoria, by the Grace of God, &c.

To the (keeper of our prison at ———.)

We command you that you bring ———, who it is said  
is detained in Our prison under your custody ———,  
before ——— at — on — day the — day of — at  
the hour of — in the —noon, and so from day to day,  
until the above action is tried, to give evidence on behalf  
of the ———. And that immediately after the said —  
shall have so given his evidence you safely conduct him to  
the prison from which he shall have been brought.

Issued, &c.

Appx. J.  
Nos. 3-5.

**No. 3.**

## SUBPENA DUCES TECUM (GENERAL FORM.)

(Heading as in Form 1.)

Victoria, by the Grace of God, &c.

To (*the names of three witnesses may be inserted*) greeting: We command you to attend before — at — on — day the — day of —, 18—, at the hour of — in the —noon, and so from day to day until the above cause is tried, to give evidence on behalf of the —, and also to bring with you and produce at the time and place aforesaid (*specify documents to be produced.*)

Issued, &c.

---

**No. 4.**

## SUBPENA AD TESTIFICANDUM AT SITTINGS OR TERM.

(Heading as in Form 1.)

Victoria, by the Grace of God, &c.

To (*the names of three witnesses may be inserted*) greeting: We command you to attend at the sittings (or term) of Our Supreme Court for — to be holden at — on —day the — day of —, 18—, at the hour of — in the —noon, and so from day to day during the said sittings, until the above cause is tried, to give evidence on behalf of the —.

Issued, &c.

---

**No. 5.**

## SUBPENA DUCES TECUM AT SITTINGS OR TERM.

(Heading as in Form 1.)

Victoria, by the Grace of God, &c.

To (*the names of three witnesses may be inserted*) greeting: We command you to attend at the sittings (or term) of the — Supreme Court for —, to be holden at — on — day the — day of —, 18—, at the hour of — o'clock in the —noon, and so from day to day until the above cause is tried, to give evidence on behalf of the —, and also to bring with you and produce at the time and place aforesaid (*specify documents to be produced.*)

Issued, &c.

**No. 6.**

Appx. J.  
Nos. 6, 7.

WRIT OF INQUIRY FOR ASSESSMENT OF DAMAGES.

*(Heading as in Form 1.)*

Victoria, by the Grace of God, &c.

To the Sheriff of ———, greeting:

Whereas it has been adjudged that the plaintiff recover against the defendant damages to be assessed;

Therefore We command you, that by the oaths of twelve good and lawful men of your bailiwick you inquire what damages the plaintiff is entitled to recover under the said judgment, and that forthwith thereafter you send the inquisition which you shall take thereupon to Our said Court, under your seal, and the seals of those by whose oath you take the inquisition, together with this writ.

Issued, &c.

---

**No. 7.**

CERTIORARI TO COUNTY COURT.

*(Heading as in Form 1.)*

Victoria, by the Grace of God, &c.

To the Judge of the County Court for District No. ———, greeting:

We, willing for certain causes to be certified of a plaint levied in our Court before you against ——— at the suit of ———, command you that you send to Us forthwith in the Supreme Court the said plaint with all things touching the same, as fully and entirely as the same remain in Our said Court before you, by whatsoever names the parties may be called therein, together with this writ, that we may further cause to be done thereupon what of right We shall see fit to be done.

Issued, &c.

Appx. J.  
Nos. 8—10.

**No. 8.**

## CERTIORARI (GENERAL.)

(Heading as in Form 1.)

Victoria, by the Grace of God, &c.

To the ———, greeting:

We, willing for certain causes to be certified of ——— command you that you send to us in our Supreme Court on the — day of ——— the ——— aforesaid, with all things touching the same, as fully and entirely as they remain in ———, together with this writ, that We may further cause to be done thereupon what of right We shall see fit to be done.

Issued, &c.

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**No. 9.**

## PROHIBITION.

(Heading as in Form 1.)

Victoria, by the Grace of God, &c.

To the (Judge of the County Court for District No.— and to (*name of plaintiff*) of ———, greeting:

Whereas we have been given to understand that you the said ——— have (entered a plaint against) *C. D.* in the said Court, and that the said Court has no jurisdiction in the said (cause) or to hear and determine the said (plaint) by reason that (*state facts showing want of jurisdiction.*)

We therefore hereby prohibit you from further proceeding in the said (action) in the said Court.

Issued, &c.

---

**No. 10.**

## MANDAMUS.

Victoria, by the Grace of God, &c.

To ——— of ———, greeting:

Whereas by (*here recite Act of Parliament or Charter if the act required to be done is founded on either one or the other.*) And whereas We have been given to understand

and be informed in our Supreme Court before us that (*insert necessary inducements and averments.*) And you the said ——— were then and there required by (*insert demand*) but that you the said ——— well knowing the premises, but not regarding your duty in that behalf then and there wholly neglected and refused to (*insert refusal*) nor have you or any of you at any time since ——— in contempt of Us and to the great damage and grievance of ——— as We have been informed from their complaint made to us. Whereupon We, being willing that due and speedy justice should be done in the premises as it is reasonable, do command you the said ——— and every of you firmly enjoining you that you (*insert command*) or that you show us cause to the contrary thereof, lest by your default the same complaint should be repeated to Us, and how you shall have executed this Our Writ make known to us in our said Court forthwith then returning to Us this Our said Writ, and this you are not to omit.

Appx. J.  
No. 11.

Issued, &c.

---

No. 11.

COMMISSION TO EXAMINE WITNESSES.

(*Heading as in Form 1.*)

Victoria, by the Grace of God, &c.

To ——— of ——— and ——— of ——— Commissioners named by and on behalf of the ——— and to ——— of ——— and ——— of ———, Commissioners named by and on behalf of the ———, greeting: Know ye, that We in confidence of your prudence and fidelity have appointed you and by these presents give you power and authority to examine on interrogatories and *viva voce* as hereinafter mentioned witnesses on behalf of the said ——— and ——— respectively at ——— before you or any two of you, so that one Commissioner only on each side be present and act at the examination, and We command you as follows:

1. Both the said ——— and the said ——— shall be at liberty to examine on interrogatories and *viva voce* on the subject matter thereof or arising out of the answers thereto such witnesses as shall be produced on their behalf, with liberty to the other party to cross-examine the said witnesses on cross-interrogatories and *viva voce*, the party producing any witness for examination being at liberty to re-examine him *viva voce*; and all such additional *viva voce* questions, whether on examination, cross-examination, or



Appx. J  
No. 11.

re-examination, shall be reduced into writing, and with the answers thereto shall be returned with the said Commission.

2. Not less than ——— days before the examination of any witness on behalf of either of the said parties, notice in writing, signed by any one of you, the Commissioners of the party on whose behalf the witness is to be examined, and stating the time and place of the intended examination and the names of the witnesses to be examined, shall be given to the Commissioners of the other party by delivering the notice to them, or by leaving it at their usual place of abode or business, and if the Commissioners or Commissioner of that party neglect to attend pursuant to the notice, then one of you, the Commissioners of the party on whose behalf the notice is given, shall be at liberty to proceed with and take the examination of the witness or witnesses *ex parte*, and adjourn any meeting or meetings, or continue the same from day to day until all the witnesses intended to be examined by virtue of the notice have been examined, without giving any further or other notice of the subsequent meeting or meetings.

3. In the event of any witness on his examination, cross-examination, or re-examination, producing any book, document, letter, paper, or writing, and refusing for good cause to be stated in his deposition to part with the original thereof, then a copy thereof, or extract therefrom, certified, by the Commissioners or Commissioner present and acting, to be a true and correct copy or extract shall be annexed to the witnesses' deposition.

4. Each witness to be examined under this Commission shall be examined on oath, affirmation, or otherwise in accordance with his religion, by or before the Commissioners or Commissioner present at the examination.

5. If any one or more of the witnesses do not understand the English language (the interrogatories, cross-interrogatories, and *viva voce* questions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English through the medium of an interpreter or interpreters to be nominated by the Commissioners or Commissioner present at the examination, and to be previously sworn according to his or their several religions by or before the said Commissioners or Commissioner truly to interpret the questions to be put to the witness and his answers thereto.

6. The depositions to be taken under this Commission shall be subscribed by the witness or witnesses, and by the Commissioners or Commissioner who shall have taken the depositions.

7. The interrogatories, cross-interrogatories, and depositions, together with any documents referred to therein, or certified copies thereof or extracts therefrom, shall be sent to the Prothonotary of the Supreme Court of Nova Scotia at — on or before the — day of — enclosed in a cover under the seals or seal of the Commissioners or Commissioner.

8. Before you or any of you, in any manner act in the execution hereof, you shall severally take the oath hereon indorsed on the Holy Evangelists or otherwise in such other manner as is sanctioned by the form of your several religions and is considered by you respectively to be binding on your respective consciences. In the absence of any other Commissioner, a Commissioner may himself take the oath.

And we give you or any one of you authority to administer such oath to the other or others of you.

Issued, &c.

---

WITNESSES' OATH.

You are true answer to make to all such questions as shall be asked you, without favor or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the truth. So help you God.

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COMMISSIONER'S OATH.

You (*or I*) shall, accordingly to the best of your (*or my*) skill and knowledge, truly and faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the Commission within written. So help you (*or me*) God.

---

INTERPRETER'S OATH.

You shall truly and faithfully, and without partiality to any or either of the parties in this cause, and to the best of your ability, interpret and translate the oath or oaths, affirmation or affirmations, which he shall administer to, and all and every the questions which shall be exhibited or put to, all and every witness and witnesses produced before and examined by the Commissioners named in the

APPX. K.  
No. 1.

Commission within written as far forth as you are directed and employed by the said Commissioners, to interpret and translate the same out of the English into the language of such witness or witnesses, and also in like manner to interpret and translate the respective depositions taken and made to such questions out of the language of such witness or witnesses into the English language. So help you God.

---

CLERK'S OATH.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, transcribe, and engross all and every the questions which shall be exhibited or put to all and every witness and witnesses, and also the depositions of all and every such witness and witnesses produced before and examined by the said Commissioners named in the Commission within written, as far forth as you are directed and employed by the Commissioners to take, write down, transcribe or engross the said questions and depositions. So help you God.

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APPENDIX K.

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No. 1.

SUMMONS (GENERAL FORM.)

18—. (*Here put the letter and number.*)

In the Supreme Court.

Between ———, plaintiff.  
and  
—————, defendant.

Let all parties concerned attend the Judge in Chambers, on ——— day, the ——— day of ———, 18—, at ——— o'clock in the ———noon, on the hearing of an application on the part of ———.

Dated the ——— day of ———, 18—.

This summons was taken out by ———, of ———, solicitor for ———.

To ———.

**No. 2.**

APPX. K.  
Nos. 2-4.

ORDER (GENERAL FORM.)

*(Heading as in Form 1.)*

Judge \_\_\_\_\_, in Chambers.

Between \_\_\_\_\_, and \_\_\_\_\_.

Upon hearing \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_ filed the \_\_\_\_\_ day of \_\_\_\_\_, 18—, and \_\_\_\_\_:

It is ordered \_\_\_\_\_, and that the costs of this application be \_\_\_\_\_.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18.—

\_\_\_\_\_

**No. 3.**

SUMMONS FOR DIRECTIONS PURSUANT TO ORDER XXIX.

*(Heading as in Form 1.)*

Let all the parties concerned attend the Judge at Chambers on \_\_\_\_\_ day the \_\_\_\_\_ day of \_\_\_\_\_ 18—,\* at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, on the hearing of an application on the part of \_\_\_\_\_ for directions for \_\_\_\_\_.

*(Here state all matters or proceedings previous to trial on which directions are required.)*

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18—.

This summons was taken out by \_\_\_\_\_, solicitor for \_\_\_\_\_.

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

\_\_\_\_\_

**No. 4.**

ORDER FOR DIRECTIONS PURSUANT TO ORDER XXIX.

*(Heading as in Form 1.)*

Upon hearing \_\_\_\_\_ and upon reading \_\_\_\_\_ it is ordered as follows:—

1. That the plaintiff deliver to the defendant further and better particulars with dates and items of his claim, and that unless such particulars be delivered within \_\_\_\_\_ days from the date of this order, all further proceedings be stayed until the delivery thereof.

\_\_\_\_\_

\* Fill in a date not less than 4 days from service of summons.

Appx. K.  
Nos. 5-6.

2. That the plaintiff and defendant be at liberty to deliver to each other interrogatories in writing, and that the said parties do respectively answer the said interrogatories as prescribed by Order XXX., Rules 8 and 25.

3. That the ——— be at liberty to issue a commission for the examination of witnesses on his behalf at ———, and that the trial of the action be stayed until the return of the said commission, the usual long order for the said commission to be drawn up, and unless agreed upon by the parties within one week, to be settled by a Judge.

4. That the action be tried in the County of ———, by a Judge.

5. That either party be at liberty without further summons, to apply to a Judge for further directions, such application to be made upon two clear days' notice to be served upon the other party.

6. That the costs of this application be costs in the action.

Dated the ——— day of ———, 18—.

---

**No. 5.**

ORDER FOR TIME.

*(Heading as in Form 1.)*

Upon hearing ———, and upon reading the affidavit of ———, filed the ——— day of ———, 18—, and ———.

It is ordered that the ——— shall have ——— time, ——— and that the costs of this application be ———.

Dated the ——— day of ———, 18—.

---

**No. 6.**

ORDER UNDER ORDER XIV., NO. 1.

*(Heading as in Form 1.)*

Upon hearing ———, and upon reading the affidavit of ——— filed the ——— day of ———, 18—, and ———.

It is ordered that the plaintiff may sign final judgment in this action for the amount indorsed on the writ with interest, if any, (or possession of the land in the indorsement of the writ described as ———) and costs to be taxed, and that the costs of this application be ———.

Dated the ——— day of ———, 18—.

**No. 7.**

APPX. K.  
Nos. 7-9.

ORDER UNDER ORDER XIV., NO. 2.

*(Heading as in Form 1.)*

Upon hearing \_\_\_\_\_ and upon reading the affidavit of  
\_\_\_\_\_ filed \_\_\_\_\_ day \_\_\_\_\_ 18—, and \_\_\_\_\_.

It is ordered that the defendant be at liberty to defend this action by delivering a defence, and that the costs of this application be \_\_\_\_\_.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18—.

---

**No. 8.**

ORDER UNDER ORDER XIV., NO. 3.

*(Heading as in Form 1.)*

Upon hearing \_\_\_\_\_ and upon reading the affidavit of  
\_\_\_\_\_ filed the \_\_\_\_\_ day of \_\_\_\_\_ 18—, and \_\_\_\_\_.

It is ordered that if the defendant pay into court within a week from the date of this order the sum of \$—, he be at liberty to defend this action by delivering a defence within \_\_\_\_\_ days after this order, but that if that sum be not so paid the plaintiff be at liberty to sign final judgment for the amount indorsed on the writ of summons, with interest, if any, and costs, and that in either event the costs of this application be \_\_\_\_\_.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18—.

---

**No. 9.**

ORDER UNDER ORDER XIV., NO. 4.

*(Heading as in Form 1.)*

Upon hearing \_\_\_\_\_ and upon reading the affidavit of  
\_\_\_\_\_ filed the \_\_\_\_\_ day of \_\_\_\_\_ 18—, and \_\_\_\_\_.

It is ordered that if the defendant pay into Court within a week from the date of this order the sum of \$—, he be at liberty to defend this action as to the whole of the plaintiff's claim.

Appx. K.  
Nos. 10, 11. And it is ordered that if that sum be not so paid the plaintiff be at liberty to sign judgment for that sum, and the defendant be at liberty to defend this action as to the residue of the plaintiff's claim.

And it is ordered that in either event the defence be delivered within — days after this order, and that the costs of this application be —.

Dated the — day of — 18—.

---

**No. 10.**

ORDER TO AMEND.

*(Heading as in Form 1.)*

Upon hearing — and upon reading the affidavit of — filed the — day of — 18—, and —.

It is ordered that the plaintiff be at liberty to amend the writ of summons in this action by — and that the costs of this application be —.

Dated the — day of — 18—.

---

**No. 11.**

ORDER FOR PARTICULARS (PARTNERSHIP.)

*(Heading as in Form 1.)*

Upon hearing — and upon reading the affidavit of — filed the — day of — 18—, and —.

It is ordered that the — furnish the — with a statement in writing, verified by affidavit, setting forth the names of the persons constituting the members or co-partners of their firm, pursuant to the Rules of the Supreme Court, 1884, Order XVI., Rule 14, and that the costs of this application be —.

Dated the — day of — 18—.

**No. 12.**

Appx. K.  
Nos. 12-14.

## ORDER FOR PARTICULARS (GENERAL.)

(Heading as in Form 1.)

Upon hearing ———, and upon reading the affidavit of ——— filed the ——— day of ———, 18—, and ———:

It is ordered that the plaintiff deliver to the defendant ——— an account in writing of the particulars of the plaintiff's claim in this action, ———, and that unless such particulars be delivered within ——— days from the date of this order all further proceedings be stayed until the delivery thereof, and that the costs of this application be ———.

Dated the ——— day of ———, 18—.

---

**No. 13.**

## ORDER FOR PARTICULARS (ACCIDENT CASE.)

(Heading as in Form 1.)

Upon hearing ———, and upon reading the affidavit of ——— filed the ——— day of ———, 18—, and ———:

It is ordered that the plaintiff deliver to the defendant an account in writing of the particulars of the injuries mentioned in the statement of claim, together with the time and place of the accident, and the particular acts of negligence complained of, and that unless such particulars be delivered within ——— days from the date of this order all further proceedings in this action be stayed until the delivery thereof, and that the costs of this application be ———.

Dated the ——— day of ———, 18—.

---

**No. 14.**

## ORDER TO DISCHARGE OR VARY ON APPLICATION BY THIRD PARTY.

(Heading as in Form 1.)

Upon hearing ———, and upon reading the affidavit of ——— filed the ——— day of ———, 18—, and ———:

It is ordered that the order of ——— in this action dated the ——— day of ———, 18—, be discharged (or varied by ———), and that the costs of this application be ———.

Dated the ——— day of ———, 18—.



Appx. K.  
Nos 15-17.

**No. 15.**

ORDER TO DISMISS FOR WANT OF PROSECUTION.

*(Heading as in Form 1.)*

Upon hearing ———, and upon reading the affidavit of ——— filed the ——— day of ———, 18—, and ———:

It is ordered that this action be for want of prosecution, dismissed with costs to be taxed and paid to the defendant by the plaintiff, and that the costs of this application be ———.

Dated the ——— day of ———, 18—.

---

**No. 16.**

ORDER FOR DELIVERY OF INTERROGATORIES.

*(Heading as in Form 1.)*

Upon hearing ———, and upon reading the affidavit of ———, filed the ——— day of ———, 18—, and ———:

It is ordered that the ——— be at liberty to deliver to the ——— interrogatories in writing, and that the said ——— do answer the interrogatories as prescribed by Order XXX., Rules 8 and 25 of the Rules of the Supreme Court, 1884, and that the costs of this application be ———.

Dated the ——— day of ———, 18—.

---

**No. 17.**

ORDER FOR AFFIDAVIT AS TO DOCUMENTS.

*(Heading as in Form 1.)*

Upon hearing ———,

It is ordered that the ——— do, within ——— days from the date of this order answer on affidavit stating what documents are or have been in ——— possession or power relating to the matters in question in this action, and that the costs of this application be ———.

Dated the ——— day of ———, 18—.

**No. 18.**Appx. K.  
Nos. 18, 19.

## ORDER TO PRODUCE DOCUMENTS FOR INSPECTION.

*(Heading as in Form 1.)*

Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_, filed the \_\_\_\_\_ day of \_\_\_\_\_, 18—, and \_\_\_\_\_,

It is ordered that the \_\_\_\_\_ do, at all seasonable times, on reasonable notice, produce at (*insert place of inspection*), situate at \_\_\_\_\_, the following documents, namely \_\_\_\_\_, and that the \_\_\_\_\_ be at liberty to inspect and peruse the documents so produced, and to take copies and abstracts thereof and extracts therefrom, at \_\_\_\_\_ expense, and that in the meantime all further proceedings be stayed, and that the costs of this application be \_\_\_\_\_.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18—.

---

**No. 19.**

## ORDER FOR PRODUCTION (UNDERWRITERS.)

*(Heading as in Form 1.)*

Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_, filed the \_\_\_\_\_ day of \_\_\_\_\_, 18—, and \_\_\_\_\_,

It is ordered that the \_\_\_\_\_ do produce and show to the \_\_\_\_\_ upon oath all insurance slips, policies, letters of instruction, or other orders for effecting such slips, or policies, or relating to the insurance or the subject-matter of the insurance on the ship \_\_\_\_\_ or the cargo on board thereof, or the freight thereby, and also all documents relating to the sailing or alleged loss of the said ship \_\_\_\_\_ the cargo on board thereof and the freight thereby, and all letters and correspondence with any person or persons in any manner relating to the effecting the insurance on the said ship, the cargo on board thereof, or the freight thereby, or any other insurance whatsoever effected on the said ship, or the cargo on board thereof, or the freight thereby on the voyage insured by, or relating to the policy sued upon in this action, or any other policy whatsoever effected on the said ship, or the cargo on board thereof, or the freight thereby, on the same voyage. Also all correspondence between the captain or agent of the vessel and any other person, with the owner or any person or persons previous to the commencement of or during the voyage upon which the alleged loss happened. Also all protests, surveys, log books,

Appx. K.  
Nos. 20, 21.

charter-parties, tradesmen's bills for repairs, average statements, letters, invoices, bills of parcels, bills of lading, manifests, accounts, accounts-current, accounts-sales, bills of exchange, receipts, vouchers, books, documents, correspondence, papers and writings, (whether originals, duplicates, or copies respectively), which now are in the custody, possession, or power, of the ———, his brokers, solicitors, or agents, in any way relating or referring to the matters in question in this action, with liberty for the ——— to inspect and take copies of or extracts from the same or any of them, and that in the meantime all further proceedings be stayed, and that the costs of this application be——.

Dated the —— day of —— 18—.

---

**No. 20.**

ORDER FOR SERVICE OUT OF JURISDICTION.

*(Heading as in Form 1.)*

Upon hearing —— and upon reading the affidavit of —— filed the —— day of —— 18—, and ——.

It is ordered that the plaintiff —— be at liberty to issue a writ for —— service out of the jurisdiction against ——.

And it is further ordered that the time for appearance to the said writ be within —— days after the service thereof, and that the costs of this application be ——.

Dated the —— day of —— 18—.

---

**No. 21.**

ORDER FOR SUBSTITUTED SERVICE.

*(Heading as in Form 1.)*

Upon hearing —— and upon reading the affidavit of ——, filed the —— day of ——, 18—, and ——:

It is ordered that service of a copy of this order, and of a copy of the writ of summons in this action, by sending the same by a prepaid post letter, addressed to the defendant —— at ——, shall be good and sufficient service of the writ.

Dated the —— day of ——, 18—

**No. 22.**

Appx. K.  
Nos. 22-24.

ORDER FOR RENEWAL OF WRIT

*(Heading as in Form 1.)*

Upon hearing ——— and upon reading the affidavit of ———, filed the ——— day of ———, 18—, and ———:

It is ordered that the writ in this action be renewed for six months from the date of its renewal, pursuant to the Rules of the Supreme Court, 1884, Order VIII., Rule 1.

Dated the ——— day of ———, 18—.

---

**No. 23.**

ORDER FOR ISSUE OF NOTICE CLAIMING CONTRIBUTION.

*(Heading as in Form 1.)*

Upon hearing ——— and upon reading the affidavit of ———, filed the ——— day of ———, 18—, and ———:

It is ordered that the defendant ——— be at liberty to issue a notice claiming ——— over against ———, pursuant to the Rules of the Supreme Court, 1884, Order XVI., Rule 49.

Dated the ——— day of ———, 18—.

---

**No. 24.**

ORDER OF REFERENCE.

*(Heading as in Form 1.)*

Upon hearing ———, and by consent ———,

It is ordered as follows:

1. *(State matters to be referred)* shall be referred to the award of———.
2. The arbitrator shall have all the powers as to certifying and amending of a Judge of the Supreme Court.
3. The arbitrator shall make and publish his award in writing of and concerning the matters referred, ready to be

Appx. K.  
No. 24.

delivered to the parties in difference, or such of them as require the same (or their respective personal representatives, if either of the said parties die before making of the award) on or before the ——— next, or on or before such further day as the arbitrator may from time to time appoint and signify in writing, signed by him and indorsed on this order.

4. The said parties shall, in all things, abide by and obey the award so to be made.

5. The costs of the said cause and the costs of the reference and award shall be ———.

6. The arbitrator may (if he think fit) examine the said parties to this cause, and their respective witnesses, upon oath or affirmation.

7. The said parties shall produce before the arbitrator all books, deeds, papers, and writings in their or either of their custody or power relating to the matters in difference.

8. Neither the plaintiff nor the defendant shall bring or prosecute any action against the arbitrator of or concerning the matters so to be referred.

9. If either party by affected delay or otherwise wilfully prevent the said arbitrator from making an award, he or they shall pay such costs to the other as ——— may think reasonable and just.

10. In the event of either of the said parties disputing the validity of the said award, or moving the ——— to set it aside, the said ——— shall have power to remit the matters hereby referred or any or either of them to the reconsideration of the arbitrator.

11. In the event of the arbitrator declining to act or dying before he has made his award, the said parties may, or if they cannot agree, the Judge may, on application by either side, appoint a new arbitrator.

12. Unless restrained by any order of the Court or a Judge, the party or parties in whose favour the award shall be made shall be at liberty within ——— days after service of a copy of the award on the solicitor or agent of the other party to sign final judgment in accordance with the award, and for all costs that he or they may be entitled to under this order, and under the award, together with the costs of the said judgment.

Dated the ——— day of ———, 18—.

**No. 25.**

**APPX K**  
**Nos. 25 27**

ORDER FOR EXAMINATION OF WITNESSES BEFORE  
ARBITRATOR.

*(Heading as in Form 1.)*

Upon hearing ——— and upon reading the affidavit of  
———, filed the ——— day of ———, 18—, and ———,

It is ordered that ——— attend before ——— the  
arbitrator herein on ———, the ——— days of ———, 18—,  
at ———, and then and there submit to be examined on  
oath or affirmation on behalf of the ——— touching the  
matters referred to the said arbitrator.

Dated the ——— day of ———, 18—.

**No. 26.**

ORDER FOR EXAMINATION OF WITNESSES AND PRODUCTION  
OF DOCUMENTS.

*(Heading as in Form 1.)*

Upon hearing ——— and upon reading the affidavit of  
———, filed ——— day of ———, 18—, and, ———,

It is ordered that ——— attend before ———,  
the arbitrator herein, on ———, the ——— days ———, of  
———, 18—, at ———, and then and there submit to be  
examined on oath or affirmation on behalf of the ———  
touching the matters referred to said arbitrator.

And it is further ordered that the said ——— do at the  
time and place aforesaid produce and deliver to the said  
arbitrator the papers, documents, and writings hereafter  
mentioned, that is to say (*specify documents to be produced*).

Dated the ——— day of ———, 18—.

**No. 27.**

ORDER TO REMOVE JUDGMENT FROM COUNTY COURT.

18—. (*Here put the letter and number.*)

In the Supreme Court.

In Chambers.

In the matter of a plaint in the County Court of ———,  
holden at ———, wherein ——— ———, plaintiff,  
and  
——— ———, defendant.

Appx. K.  
No. 28.

Upon reading the affidavit of \_\_\_\_\_, filed the \_\_\_\_\_ day of \_\_\_\_\_, 18—, and \_\_\_\_\_, certified copy of the judgment in the plaint above mentioned,

It is ordered that a writ of certiorari issue to remove the said judgment from the above-named County Court into the Supreme Court.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18—.

---

**No. 28.**

**ORDER FOR ARREST (CAPIAS).**

*(Heading as in Form 1.)*

On hearing \_\_\_\_\_ and on reading the affidavit of \_\_\_\_\_, sworn the \_\_\_\_\_ day of \_\_\_\_\_, 18—, and \_\_\_\_\_,

It is ordered that the defendant be arrested and imprisoned for the term of \_\_\_\_\_ from the date of his arrest, including the day of such date, unless and until he shall sooner deposit in Court the sum of \$\_\_\_\_\_, or give to the sheriff or other officer arresting him a bond executed by him, and two sufficient sureties in the penalty of \$\_\_\_\_\_, or some other security satisfactory to the plaintiff, that any sum recovered against the said defendant in the action shall be paid, or that the defendant shall be rendered to prison.

And it is further ordered that the sheriff of \_\_\_\_\_ do, within one calendar month from the date hereof, including the day of such date and not afterwards, take the defendant for the purpose aforesaid, if he shall be found in the said sheriff's bailiwick.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 18—.

---

To be indorsed, as a writ of summons, with name of solicitor procuring the same, or of plaintiff, if plaintiff is suing in person and without a solicitor.

---

**BOND ON DEFENDANT'S ARREST.**

Know all men by these presents that we, *C. D.* (*the defendant*) of \_\_\_\_\_, \_\_\_\_\_, *E. F.* of \_\_\_\_\_, \_\_\_\_\_, and *G. H.* of \_\_\_\_\_, \_\_\_\_\_, are held and firmly bound to *J. K.* of \_\_\_\_\_, High Sheriff of the county of \_\_\_\_\_, (*or coroner of the county of \_\_\_\_\_*), in the sum of \$\_\_\_\_\_ of lawful money of

APPX. K.  
No. 29.

Canada, to be paid to the said *J. K.*, or his certain attorney, executors, administrators, or assigns, for which payment well and truly to be made, we bind ourselves, and each of us for himself, our and every of our heirs, executors, and administrators firmly by these presents, sealed with our seals and dated the — day of —, A. D., 18—.

Whereas, the above bounden, *C. D.*, was on the — day of — taken by the said *J. K.*, as sheriff (*or* coroner) as aforesaid, by virtue of an order for the arrest of the said *C. D.*, bearing date the — day of — to the said sheriff (*or* coroner) delivered, in an action at the suit of *A. B.* And whereas, by the said order, it is ordered that the said *C. D.* be arrested and imprisoned for — month from the date of his arrest, including the day of such date, unless and until he shall sooner deposit in Court the sum of \$—, or give to the said *J. K.* a bond executed by him and (two) sufficient sureties in the penalty of \$—, or some other security satisfactory to the plaintiff, that any sum recovered against the said *C. D.* in the said action shall be paid, or that the said *C. D.* shall be rendered to prison: Now the condition of this obligation is such that if any sum recovered against the said *C. D.* in the said action shall be paid, or the said *C. D.* shall be rendered to prison according to the said order, then this obligation shall be void, otherwise to stand and remain in full force and effect.

Signed, sealed and delivered }  
in presence of ———. }  
*C. D.* (L. S.)  
*E. F.* (L. S.)  
*G. H.* (L. S.)

**No. 29.**

ORDER OF REFERENCE UNDER S. 28 OF THE NOVA SCOTIA JUDICATURE ACT, 1884.

*(Heading as in Form 1.)*

Upon hearing — and upon reading the affidavit of — filed the — day of — 18—, and —.

It is ordered that the following question arising in this action, namely, —, be referred for inquiry and report to —, under section 28 of The Nova Scotia Judicature Act, 1884, and that the costs of this application be —.

Dated the — day of — 18—.



Appx. K.  
No. 20.

## No. 30.

ORDER OF REFERENCE UNDER S. 29 OF THE NOVA SCOTIA  
JUDICATURE ACT, 1884.

*(Heading as in Form 1.)*

Upon hearing ——— and upon reading the affidavit of  
——— filed the —— day of —— 18—, and ——.

It is ordered that the *(state whether all or some, and if so which, of the questions are to be tried)* in this action be tried by ——, who shall have all the powers as to certifying and amending of a Judge of the Supreme Court, and shall make his report of and concerning the matters ordered to be tried as aforesaid, pursuant to the statute *(or direct judgment to be entered and otherwise deal with the whole action, pursuant to Order XXXIV., Rule 38.)*

And it is further ordered that the said referee may, if he think fit, examine the parties to this action, and their respective witnesses, upon oath or affirmation, and that the said parties shall produce before the said referee all books, deeds, papers, and writings in their or either of their custody or power relating to the matters so ordered to be tried.

And it is further ordered that neither the plaintiff nor the defendant shall bring or prosecute any action against the said referee, or against each other, of or concerning the matters so ordered to be tried, and that if either party by affected delay or otherwise wilfully prevent the said referee from making his report, he or they shall pay such costs to the other as the Court or a Judge may think reasonable and just.

And it is further ordered that in the event of the said referee declining to act, or dying before he has made his report, the said parties may, or if they cannot agree, one of the Judges of the Supreme Court may, upon application by either party, appoint a new referee.

And it is ordered that the costs of this application be ——.

Dated the —— day of ——, 18—.

**No. 31.**

Appx. K.  
Nos. 31, 32.

ORDER OF REFERENCE TO MASTER.

*(Heading as in Form 1.)*

Upon hearing ——— and upon reading the affidavit of ——— filed the ——— day of ———, 18—, and ———:

It is ordered that this action [*or the matters of account in this action, or the following questions in this action being matters of account, namely, (stating them)*], be referred to the certificate of ——— with all the powers as to certifying and amending of a Judge of the Supreme Court, and that the costs of the ——— and of the reference be in the discretion of the said ———, and that the costs of this application be ———.

Dated the ——— day of ———, 18—.

**No. 32.**

ORDER FOR EXAMINATION OF WITNESSES BEFORE TRIAL.

*(Heading as in Form 1.)*

Upon hearing ——— and upon reading the affidavit of ———, filed the ——— day of ———, 18—, and ———:

It is ordered that ———, a witness on behalf of the ———, be examined *viva voce* (on oath or affirmation) before ———, Esquire, special examiner, the ——— solicitor or agent giving to the ——— solicitor or agent ——— notice in writing of the time and place where the examination is to take place.

And it is further ordered that the examination so taken be filed in the Prothonotary's office of the Supreme Court at ———, and that an authenticated copy or copies thereof may be read and given in evidence on the trial of this cause, saving all just exceptions, without any further proof of the absence of the said witness than the affidavit of the solicitor or agent of the ——— as to his belief, and that the costs of this application be ———.

Dated the ——— day of ———, 18—.

Appx. K.  
Nos. 33, 34.

**No. 33.**

SHORT ORDER FOR ISSUE OF COMMISSION TO EXAMINE  
WITNESSES.

(*Heading as in Form 1.*)

Upon hearing ——— and upon reading the affidavit of ———, filed the — day of ———, 18—, and ———:

It is ordered that the — be at liberty to issue a commission for the examination of witnesses on — behalf at —.

And it is further ordered that the trial of this action be stayed until the return of the said commission, the usual long order to be drawn up, and unless agreed upon by the parties within one week to be settled by a Judge, (*or as the case may be,*) and that the cost of this application be ———.

Dated the — day of ———, 18—.

**No. 34.**

LONG ORDER FOR COMMISSION TO EXAMINE WITNESSES.

(*Heading as in Form 1.*)

Upon hearing ——— and upon reading the affidavit of ———, filed the — day of ———, 18—, and ———,

It is ordered as follows:—

1. A commission may issue directed to ———, of ———, and ———, of ———, commissioners named by and on behalf of the ———, and to ——— of ——— and ——— commissioners named by and on behalf of the ——— for the examination upon interrogatories and *viva voce* of witnesses on behalf of the said ——— and ——— respectively at ——— aforesaid before the said commissioners, or any two of them, so that one commissioner only on each side be present and act at the examination.

2. Both the said ——— and ——— shall be at liberty to examine upon interrogatories and *viva voce* upon the subject-matter thereof or arising out of the answers thereto such witnesses as may be produced on their behalf, with liberty to the other party to cross-examine the said witnesses upon cross-interrogatories and *viva voce*, the party producing the witness for examination being at

liberty to re-examine him *viva voce* : and all such additional *viva voce* questions, whether on examination, cross-examination, or re-examination, shall be reduced into writing, and with the answers thereto, returned with the said commission.

Appx. K.  
No. 34

3. Within ——— days from the date of this order the solicitors or agents of the said ——— and ——— shall exchange the interrogatories they propose to administer to their respective witnesses, and shall also within ——— days from the exchange of such interrogatories, exchange copies of the cross-interrogatories intended to be administered to the said witnesses.

4. ——— days previously to the sending out of the said commission, the solicitor of the said ——— shall give to the solicitor of the said ——— notice in writing of the mail or other conveyance by which the commission is to be sent out.

5. ——— days previously to the examination of any witness on behalf of the said ——— or ——— respectively, notice in writing signed by any one of the commissioners of the party on whose behalf the witness is to be examined and stating the time and place of the intended examination, and the names of the witnesses intended to be examined, shall be given to the commissioners of the other party by delivering the notice to them personally, or by leaving it at their usual place of abode or business, and if the commissioners of that party neglect to attend pursuant to the notice, then one of the commissioners of the party on whose behalf the notice is given shall be at liberty to proceed with and take the examination of the witness or witnesses, *ex parte*, and adjourn any meeting or meetings, or continue the same, from day to day until all the witnesses intended to be examined by virtue of the notice have been examined, without giving any further or other notice of the subsequent meeting or meetings.

6. In the event of any witness on his examination, cross-examination, or re-examination producing any book, document, letter, paper, or writing, and refusing for good cause, to be stated in his deposition, to part with the original thereof, then a copy thereof, or extract therefrom, certified by the commissioners or commissioner present to be a true and correct copy or extracts, shall be annexed to the witnesses' deposition.

7. Each witness to be examined under the commission shall be examined on oath, affirmation, or otherwise in

Appx. K. accordance with his religion by or before the said commis-  
No. 34. sioners or commissioner.

8. If any one or more of the witnesses do not understand the English language (the interrogatories, cross-interrogatories, and *viva voce* questions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English through the medium of an interpreter or interpreters, to be nominated by the commissioners or commissioner, and to be previously sworn according to his or their several religions by or before the said commissioners or commissioner truly to interpret the questions to be put to the witness or witnesses, and his and their answers thereto.

9. The depositions to be taken under and by virtue of the said commission shall be subscribed by the witness or witnesses, and by the commissioners or commissioner who shall have taken such depositions.

10. The interrogatories, cross-interrogatories, and depositions, together with any documents referred to therein, or certified copies thereof, or extracts therefrom, shall be sent to the Prothonotary at —— on or before the —— day of ——, or such further or other day as may be ordered, enclosed in a cover under the seal or seals of the said commissioners or commissioner, and certified copies thereof may be given in evidence on the trial of this action by and on behalf of the said —— and —— respectively, saving all just exceptions, without any other proof of the absence from this country of the witness or witnesses therein named, than an affidavit of the solicitor or agent of the said —— or —— respectively, as to his belief of the ——.

11. The trial of this cause is to be stayed until the return of the said commission.

12. The costs of this order, and of the commission to be issued in pursuance hereof, and of the interrogatories, cross-interrogatories, and depositions to be taken thereunder, together with any such document, copy, or extract as aforesaid, and official copies thereof, and all other costs incidental thereto, shall be ——.

Dated the —— day of ——, 18——.

No. 35.

Appx. K.  
Nos. 35, 36.

ORDER FOR EXAMINATION OF JUDGMENT DEBTOR.

18—. (*Here put the letter and number.*)

In the Supreme Court.

Between ———, Judgment Creditor,  
and  
———, Judgment Debtor.

Upon hearing ——— and upon reading the affidavit of  
——— filed the ——— day of ———, 18—, and ———.

It is ordered that the above-named judgment debtor attend and be orally examined as to whether any or what debts are owing to him, before ——— in Chambers, at ——— on the ——— day of ——— inst., and that the said judgment debtor produce his books (*or as may be ordered*) before the said Judge at the time of the examination, and that the costs of this application be ———.

Dated the ——— day of ———, 18—.

No. 36.

GARNISHEE ORDER (ATTACHING DEBT.)

18—. (*Here put the letter and number.*)

In the Supreme Court.

In Chambers.

Between ———, Judgment Creditor,  
and  
———, Judgment Debtor,  
———, Garnishee.

Upon hearing ——— and upon reading the affidavit of  
———, filed the ——— day of ——— 18—, and ———.

It is ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the Supreme Court, on the ——— day of ———,

Appx. K. 18—, for the sum of \$——, on which judgment the said  
 No. 37. sum of \$—— remains due and unpaid.

And it is further ordered that the said garnishee attend the Judge in Chambers on —— day the —— day of ——, 18—, at —— o'clock in the ——noon, on an application by the said judgment creditor, that the said garnishee pay the debt due from him to the said judgment debtor, or so much thereof as may be sufficient to satisfy the judgment.

And that the costs of this application be ——.

Dated the —— day of ——, 18—.

---

**No. 37.**

GARNISHEE ORDER (ABSOLUTE.)

18—. (*Here put the letter and number.*)

In the Supreme Court.

In Chambers.

Between —— ——, Judgment Creditor,  
 and  
 —— ——, Judgment Debtor,  
 —— ——, Garnishee.

Upon hearing —— and upon reading the affidavit of ——, filed the —— day of ——, 18—, and —— whereby it was ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor shall be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the Supreme Court on the —— day of ——, 18—, for the sum of \$——, on which judgment the said sum of \$—— remained due and unpaid.

It is ordered that the said garnishee do forthwith pay the said judgment creditor the debt due from him to the said judgment debtor (or so much thereof as may be sufficient to satisfy the judgment debt), and that in default thereof execution may issue for the same, and that the costs of this application be ——.

Dated the —— day of ——, 18—.

No. 38.

Appx. K.  
Nos. 38, 39.

ORDER ON CLIENT'S APPLICATION TO TAX SOLICITOR'S BILL  
OF COSTS.

18—. (*Here put the letter and number.*)

In the Supreme Court.

In Chambers.

In the matter of the taxation of costs, and in the matter of ———, one of the solicitors of the Supreme Court.

It is ordered that the bill of fees, charges and disbursements delivered to the applicant by the above-named solicitor be taxed, and that the said solicitor give credit for all sums of money by him received of or on account of the applicant, and that he refund what, if anything, he may on such taxation appear to have been overpaid.

And it is further ordered that the said solicitor do not commence or prosecute any cause or matter touching the demand pending the taxation.

And it is further ordered that upon payment by the applicant of what (if anything) may appear to be due to the said solicitor the said solicitor do, (if required) deliver up to the applicant, or as he may direct, all deeds, books, papers, and writings in the said solicitor's possession, custody or power belonging to the applicant.

And it is ordered that the costs of this application be ———.

Dated the ——— day of ———, 18—.



No. 39.

ORDER ON SOLICITOR'S APPLICATION TO TAX BILL OF COSTS.

18—. (*Here put the letter and number.*)

In the Supreme Court.

In Chambers.

In the matter of the taxation of costs, and in the matter of ———, one of the Solicitors of the Supreme Court.

Upon hearing ———, and upon reading the affidavit of ———, filed the ——— day of ———, 18—, and ———:



Appx. K.  
No. 40.

It is ordered that the above-named solicitor's bill of fees, charges and disbursements, delivered to \_\_\_\_\_ (hereinafter called the said client) be taxed, and that the said solicitor give credit for all sums of money by him received from or on account of the said client, and that he refund what, if anything, he may on such taxation appear to have been overpaid.

And it is further ordered that the said solicitor do not commence or prosecute any cause or matter touching the demand pending the taxation.

And it is further ordered that upon payment by the said client of what (if anything) may appear to be due to the said solicitor, the said solicitor do (if required), deliver to the said client, or as he may direct, all deeds, books, papers, and writings in the said solicitor's possession, custody or power, belonging to the said client.

And it is ordered that the costs of this application be \_\_\_\_\_.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18—.

**No. 40.**

ORDER TO TAX AFTER ACTION BROUGHT.

*(Heading as in Form 1.)*

Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_, filed the \_\_\_\_\_ day of \_\_\_\_\_, 18—, and \_\_\_\_\_:

It is ordered that the plaintiff's bill of costs, charges and disbursements delivered to the defendant, for the recovery of which this action is brought, be taxed, and that the plaintiff give credit at the time of taxation for all sums of money by him received from or on account of the defendant.

And it is further ordered that the plaintiff do not prosecute this action touching the demand pending the taxation.

And it is further ordered that upon payment of what, (if anything), may appear to be due to the plaintiff, together with the costs of this action (which are to be also taxed and paid), all further proceedings therein be stayed, and that the costs of this application be \_\_\_\_\_.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18—.

No. 41.

APPX. K.  
Nos. 41, 42.

INTERPLEADER ORDER NO. 1.

18—. (*Here put the letter and number.*)

In the Supreme Court.

In Chambers.

Between ———, Plaintiff,  
and  
————, Defendant,  
and between

————, Claimant,  
and  
————, Respondent.

Upon hearing ——— and upon reading the affidavit of  
———, filed the ——— day of ———, 18—, and ———,

It is ordered that the claimant be barred, that no action  
be brought against the above-named (Sheriff) ——— and  
that the costs of this application be ———.

Dated the ——— day of ———, 18—.

---

No. 42.

INTERPLEADER ORDER, NO. 2.

18—. (*Here put the letter and number.*)

In the Supreme Court.

In Chambers.

Between ———, Plaintiff,  
and  
————, Defendant,  
and  
————, Claimant.

Upon hearing ——— and upon reading the affidavit of  
———, filed the ——— day of ———, 18—, and ———.

It is ordered that the above-named claimant be  
substituted as defendant in this action in lieu of the present  
defendant, and the costs of this application be ———.

Dated the ——— day of —, 18—.

Appx. K.  
No. 43.

No. 43.

INTERPLEADER ORDER, NO. 3.

18—. (*Here put the letter and number.*)

In the Supreme Court.

In Chambers.

Between ———, Plaintiff,  
and  
————, Defendant,  
and between

————, Claimant,  
and the said ———, execution creditor, and ———, the  
Sheriff of ———, Respondents.

Upon hearing ———, and upon reading the affidavit of  
————, filed the ——— day of ———, 18—, and ———,

It is ordered that the said Sheriff proceed to sell the  
goods seized by him under the writ of execution issued  
herein, and pay the net proceeds of the sale, after deducting  
the expenses thereof, into Court in this cause, to abide  
further order herein.

And it is further ordered that the parties proceed to the  
trial of an issue in the Supreme Court, in which the said  
claimant shall be the plaintiff, and the said execution  
creditor shall be the defendant, and the question to be tried  
shall be whether at the time of the seizure by the sheriff  
the goods seized were the property of the claimant as  
against the execution creditor.

And it is further ordered that this issue be prepared  
and delivered by the plaintiff therein within ——— from  
this date, and be returned by the defendant therein within  
———— days, and be tried at ———.

And it is further ordered that the question of costs and  
all further questions be reserved until the trial of the said  
issue, and that no action shall be brought against the said  
sheriff for the seizure of the said goods.

Dated the ——— day of ———, 18—.

**No. 44.**

Appx. K.  
Nos. 44, 45.

INTERPLEADER ORDER, NO. 4.

*(Heading as in Form 43.)*

Upon hearing, &c.

It is ordered that upon payment of the sum of \$—— into Court by the said claimant within —— from this date, or upon his giving within the same time security to the satisfaction of a Judge (*or as the case may be*) for the payment of the same amount by the said claimant according to the directions of any order to be made herein, and upon payment to the above-named sheriff of the possession money from this date, the said sheriff do withdraw from the possession of the goods seized by him under the writ of execution herein.

And it is further ordered that unless such payment be made or security given within the time aforesaid the said sheriff proceed to sell the said goods, and pay the proceeds of the sale, after deducting the expenses thereof and the possession money from this date, into Court, in the cause, to abide further order herein.

And it is further ordered that the parties proceed, &c.

And it is further ordered that this issue, &c.

And it is further ordered that the question of costs, &c.

Dated the —— day of ——, 18—.

**No. 45.**

INTERPLEADER ORDER NO. 5.

*(Heading as in Form 43.)*

Upon hearing, &c.

It is ordered that upon payment of the sum of \$—— into Court by the said claimant, or upon his giving security to the satisfaction of a Judge (*or, as the case may be*), for the payment of the same amount by the claimant according to the directions of any order to be made herein, the above-named sheriff withdraw from the possession of the goods seized by him under the writ of execution issued herein.

Appx. K.  
Nos. 46, 47.

And it is further ordered that in the meantime, and until such payment made or security given, the sheriff continue in possession of the goods, and the claimant pay possession money for the time he so continues, unless the claimant desire the goods to be sold by the sheriff, in which case the sheriff is to sell them and pay the proceeds of the sale, after deducting the expenses thereof, and the possession money from this date, into Court in the cause, to abide further order herein.

And it is further ordered that the parties proceed, &c.

And it is further ordered that this issue, &c.

And it is further ordered that the question of costs, &c.

Dated the — day of —, 18—.

---

**No. 46.**

INTERPLEADER ORDER, NO. 6.

*(Heading as in Form 43.)*

The claimant and the execution creditor having requested and consented that the merits of the claim made by the claimant be disposed of and determined in a summary manner, now upon hearing —, and upon reading the affidavit of —, filed the — day of —, 18—, and —.

It is ordered that —.

And that the costs of this application be —.

Dated the — day of —, 18—.

---

**No. 47.**

INTERPLEADER ORDER, NO. 7.

*(Heading as in Form 43.)*

Upon hearing —, — and upon reading the affidavit of —, filed the — day of —, 18—, and —,

It is ordered that the above-named sheriff proceed to sell enough of the goods seized under the writ of execution

issued in this action to satisfy expenses of the said sale, the rent (if any) due the claimant, and this execution.

APPX. K.  
Nos. 48, 49.

And it is further ordered that out of the proceeds of the said sale (after deducting the expenses thereof, and rent, if any), the said sheriff pay to the claimant the amount of his said claim, and to the execution creditor the amount of his execution, and the residue, if any, to the defendant.

And it is further ordered that no action be brought against the said sheriff, and that the costs of this application be ———.

Dated the ——— day of ———, 18—.

---

**No. 48.**

ORDER DISMISSING SUMMONS (GENERALLY.)

*(Heading as in Form 1.)*

Upon hearing ——— and upon reading the affidavit of ———, filed the ——— day of ———, 18—, and ———,

It is ordered that the application of ——— be dismissed with costs to be taxed and paid by the ——— to the ——— (or, and that the costs of and occasioned by this application be the ———'s in any event.)

Dated the ——— day of ———, 18—.

---

**No. 49.**

ORDER TO REPLEVY.

18—. *(Here put the letter and number.)*

In the Supreme Court.

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

By virtue of the provisions of the Rules of the Supreme Court, 1884, I hereby authorize and direct you without delay on security being given you according to said Rules (Order XLV.), to replevy and deliver to the said *A. B.* the

Appx. K. goods and chattels (*or* cattle) which he claims in this suit,  
Nos. 50, 51. and which he alleges that the said *C. D.* unjustly detains ;  
 that is to say :—(*Here enumerate the goods, &c., to be replevied*), and forthwith to return to me this order, and what you shall have done under the same.

Dated the — day of —, 18—.

(Signed,) ———,

Prothy. Sup. Ct., Co. of ———.

To the High Sheriff of the  
 County of ———.

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**No. 50.**

AFFIDAVIT FOR REPLEVIN.

(*Heading as above.*)

I, *A. B.*, of ———, in the County of ———, make oath and say :

That I have the right to the possession of the following cattle (*or* goods, *as the case may be*), to wit : ———, as I verily believe, and that *C. D.* unjustly detains the same ; and that the said cattle (*or* goods, *as the case may be*), are to the best of my belief, of the value of ——— dollars.

Sworn to at ———, this — day  
 of ———, A. D. 18—, before me, ———.

---

**No. 51.**

BOND FOR REPLEVIN.

[*Bond in the usual form from A. B., (plaintiff,) and E. F., and G. H.*].

Whereas, the said *A. B.* has obtained an order for replevin against *C. D.* to obtain possession of certain cattle (*or* goods) to wit : ———, which the said *A. B.* asserts to be his property.

Now, the condition of this obligation is such, that if the said *A. B.* shall not prosecute his suit in which the said

order was made, with effect and without delay, or if suit is carried on and continued between the said *A. B* and *C. D.* touching the property of the said cattle (*or goods*) and the Court shall adjudge that the said cattle (*or goods*) shall be restored to the said *C. D.* with damages for detaining the same, then if the said *A. B.* shall restore the said cattle (*or goods*) and pay and satisfy any judgment that may be obtained against him, this bond shall become void.

Appx. K.  
Nos. 52, 53.

*(Where the plaintiff himself does not join in the bond, the form must be altered to conform to the fact.)*

---

**No. 52.**

BOND TO OBTAIN RETURN OF THE PROPERTY.

*[Bond in the usual form from C. D. (defendant,) and E. F. and G. H.]*

Whereas, the said *C. D.* claims to retain certain cattle (*or goods*) to wit: \_\_\_\_\_, to recover possession of which *A. B.* has obtained an order for replevin.

Now, the condition of this obligation is such, that if the Court shall adjudge that the said cattle (*or goods*) shall be restored to the said *A. B.* with or without damages for detaining the same, then if the said *C. D.* shall restore the said cattle (*or goods*), and pay and satisfy any judgment that may be recovered against him, this obligation shall be void, but otherwise shall remain in force.

*(Where the defendant himself does not join in the bond, the form must be altered to conform to the fact.)*

---

**No. 53.**

ORDER FOR EXAMINATION TOUCHING MEANS.

18.— *(Here put the letter and number.)*

In the Supreme Court.

In Chambers.

Between \_\_\_\_\_, Judgment Creditor,  
and  
\_\_\_\_\_ , Judgment Debtor.

On hearing \_\_\_\_\_ and on reading the affidavit of \_\_\_\_\_, filed the \_\_\_\_\_ day of \_\_\_\_\_, 18—, and \_\_\_\_\_ :



Appx. L.  
No. 1.

It is ordered that the above-named \_\_\_\_\_ (or that \_\_\_\_\_, an officer of the defendant corporation) attend before the Judge, at Chambers, on the \_\_\_\_\_ day of \_\_\_\_\_, 18—, at \_\_\_\_\_ in the \_\_\_\_\_noon, to be examined on oath touching his means (or the means of the said corporation,) of paying the judgment debt, and that the costs of this application be \_\_\_\_\_.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18—.

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APPENDIX L.

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EQUITY OR CHANCERY BUSINESS.

No. 1.

*Summons.*

In the Supreme Court, \_\_\_\_\_, 18—.

In the matter of the estate of *A. B.*, late of \_\_\_\_\_, in the county of \_\_\_\_\_, deceased \_\_\_\_\_.

Or

Between *C. D.*, petitioner,  
and  
*E. F.*, defendant.

The defendant *E. F.* (or *G. H.*, of, &c.) is hereby summoned to attend at Chambers on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_noon, to be examined, (or to be examined as a witness) on the part of the \_\_\_\_\_, for the purpose of the proceedings directed by Mr. Justice \_\_\_\_\_, to be taken \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

X. Y.,  
Prothy.

This summons was taken out by \_\_\_\_\_ of \_\_\_\_\_, in the county of \_\_\_\_\_, solicitors for \_\_\_\_\_.

**No. 2.**

APPX. L.  
Nos. 2, 3.

ADVERTISEMENT FOR CLAIMANTS NOT BEING CREDITORS.

Pursuant to a judgment (or order) of the Supreme Court made in (the matter of the estate of ———, and in) an action by ——— against ———, the persons claiming to be next of kin to (or the heir of, *as the case may be*) ———, late of ———, in the county of ———, who died in or about the month of ———, are by their solicitors, on or before the ——— day of ———, to come in and prove their claims at Chambers at the Court House, in Halifax, or in default thereof, they will be peremptorily excluded from the benefit of the said judgment (or order). The ——— day of ———, at ——— o'clock in the ———noon, at Chambers, is appointed for hearing and adjudicating upon the claims.

Dated the ——— day of ———, 18—.

A. B.,  
Prothy.

**No. 3.**

ADVERTISEMENT FOR CREDITORS.

Pursuant to a judgment (or an order) of the Supreme Court made in (the matter of the estate of A. B., and in) an action *S.* against *P.*, the creditors of A. B., late of ———, in the county of ———, who died in or about the month of ———, 18—, are on or before the ——— day of ———, 18—, to send by post, prepaid, to *E. F.*, of ———, the solicitor of the defendant *C. D.*, the executor (or administrator) of the deceased (or *as may be directed*), their Christian and surname, addresses and descriptions, the full particulars of their claims, a statement of their accounts, and the nature of the securities (if any), held by them, or in default thereof, they will be peremptorily excluded from the benefit of the said judgment (or order). Every creditor holding any security is to produce the same before the Judge, presiding at Chambers, in Halifax, on the ——— day of ———, 18—, at ——— o'clock in the ———noon, being the time appointed for adjudication on the claims.

Dated this ——— day of ———, 18—.

G. H.,  
Prothy.

Appx. L.  
Nos. 4, 5.

**No. 4.**

## NOTICE TO CREDITOR TO PRODUCE DOCUMENTS.

(*Short Title.*)

You are hereby required to produce in support of the claim sent in by you against the estate of *A. B.*, deceased, (*describe the document required to be produced*), before Mr. Justice ———, at Chambers, at the County Court House in Halifax, on the ——— day of ———, at ——— o'clock in the ———noon.

Dated this ——— day of ———, 18—.

*G. R.*, of &c., solicitor for plaintiff (*or defendant, or as the case may be.*)

To Mr. *S. T.*

**No. 5.**

## AFFIDAVIT OF EXECUTOR OR ADMINISTRATOR AS TO CLAIMS OF CREDITORS.

In the Supreme Court.

(*Title.*)

We, *C. D.*, of &c., the above-named plaintiff (*or defendant, or as may be.*) the executor (*or administrator*) of *A. B.*, late of ———, in the County of ———, deceased, and *E. F.*, of &c., solicitor, severally make oath and say as follows:—

I, the said *E. F.*, for myself, say as follows:

1. I have in the paper writing now produced and shown to me and marked A., set forth a list of all the claims the particulars of which have been sent in to me by persons claiming to be creditors of the said *A. B.*, deceased, pursuant to the advertisement issued in that behalf, dated the ——— day of ———, 18—.

And I, the said *C. D.*, for myself, say as follows:

2. I have examined the particulars of the several claims mentioned in the paper writing now produced and shown to me, and marked A., and I have compared the same with the books, accounts, and documents of the said *A. B.* (*or as may be; and state any other inquiries or*

*investigations made*), in order to ascertain, so far as I am able, to which of such claims the estate of the said *A. B.* is justly liable. Appx. L.  
No. 6.

3. From such examination (*and state any other reasons*) I am of opinion and verily believe, that the estate of the said *A. B.* is justly liable to the amounts set forth in the sixth column of the first part of the said paper writing, marked *A.*, and to the best of my knowledge and belief, such several amounts are justly due from the estate of the said *A. B.*, and proper to be allowed to the respective claimants named in the said schedule.

4. I am of opinion that the estate of the said *A. B.* is not justly liable to the claims set forth in the second part of the said paper writing, marked *A.*, and that the same ought not to be allowed without proof by the respective claimants (*or I am not able to state whether the estate of the said A. B. is justly liable to the claims set forth in the second part of the said paper writing, marked A., or whether such claims, or any parts thereof, are proper to be allowed without further evidence.*)

5. Except as hereinbefore mentioned, there are not, to the best of my knowledge, information, and belief, any other claims against the estate of the said *A. B.*

Sworn, &c.

---

**No. 6.**

EXHIBIT REFERRED TO IN AFFIDAVIT NO. 5.

A.

(*Short Title.*)

List of claims, the particulars of which have been sent in to *E. F.*, the solicitor of the plaintiff (*or defendant, or as may be*), by persons claiming to be creditors of *A. B.*, deceased, pursuant to the advertisement issued in that behalf, dated the —— day of ——, 18—.

This paper writing marked *A.*, was produced and shown to ——, and is the same as referred to in his affidavit sworn before me this —— day of ——, 18—.

*W. B., &c.*

Appx. L.  
No 7.

FIRST PART.—Claims proper to be allowed without further evidence.

Serial No.	Names of Claimants.	Addresses and Descriptions.	Particulars of claim.	Amount claimed.	Amount proper to be allowed.
				\$	\$

SECOND PART.—Claims which ought to be proved by the Claimants.

Serial No.	Names of Claimants.	Addresses and Descriptions.	Particulars of Claim.	Amount Claimed.
				\$

**No. 7.**

NOTICE TO CREDITOR OF ALLOWANCE OF CLAIM.

*(Short Title.)*

The claim sent in by you against the estate of *A. B.*, deceased, has been allowed at the sum of \$—, with interest thereon at \$— per centum per annum, from the — day of —, 18—, and \$— for costs.

*(If part only allowed, add, If you claim to have a larger sum allowed, you are hereby required to prove such further claim, and you are to file such affidavit as you may be advised in support of your claim, and to give notice thereof to me on or before the — day of —, 18— next, and to attend by your solicitor at — Chambers at the Court House in Halifax, on — day of —, 18—, at — o'clock in the — noon, being the time appointed for adjudicating on the claim.)*

Dated this — day of —, 18.

*G. R.*, of, &c., Solicitor for the plaintiff (or defendant, or as may be).

To Mr. *P. R.*

**No. 8.**

Appx L.  
Nos. 8, 9.

## NOTICE TO CREDITOR TO PROVE HIS CLAIM.

(*Short Title.*)

You are hereby required to prove the claim sent in by you against the estate of A. B. deceased. You are to file such affidavit as you may be advised in support of your claim, and give notice thereof to me on or before the — day of — next, and to attend by your solicitor at Chambers at the County Court House at Halifax, on the — day of —, 18—, at — o'clock in the — noon, being the time appointed for the adjudicating on the claim.

Dated the — day of —, 18—.

G. R., of, &c., solicitor for the plaintiff (*or, defendant, or as may be.*)

To Mr. S. T.

**No. 9.**

## CERTIFICATE.

(*Title.*)

In pursuance of the directions given to me by Mr. Justice —, I hereby certify that the result of the accounts and inquiries which have been taken and made in pursuance of the judgment (*or order*) in this cause dated the — day of —, is as follows :

1. The defendants — the executors of —, the testator, have received personal estate to the amount of \$—, and they have paid, or are entitled to be allowed, on account thereof, sums to the amount of \$—, leaving a balance due from (*or to*) them of \$— on that account.

The particulars of the above receipts and payments appear in the account marked —, verified by the affidavit of —, filed on the — day of —, and which account is to be filed with this certificate, except that in addition to the sums appearing on such account to have been received, the said defendants are charged with

Appx. L.  
No. 9.

the following sums, (*state the same here or in a schedule*) and except that I have disallowed the items of disbursement in the said account numbered ———, and,

(*Or in cases where a transcript has been made.*)

The defendants ——— have brought in an account verified by the affidavit of ———, filed on the ——— day of ——— and which account is marked ——— and is to be filed with this certificate. The account has been altered, and the amount marked ———, and which is also to be filed with this certificate, is a transcript of the account as altered and passed.

2. The debts of the testator which have been allowed, are set forth in the ——— Schedule hereto, and with the interest thereon and costs mentioned in the Schedule, are due to the persons therein named, and amount altogether to \$———.

3. The funeral expenses of the testator amount to the sum of \$———, which I have allowed the said executors in the said account of personal estate.

4. The legacies given by the testator are set forth in the ——— Schedule hereto, and with the interest therein mentioned remain due to the persons therein named, and amount altogether to \$———.

5. The outstanding personal estate of the testator consists of the particulars set forth in the ——— Schedule hereto.

5. The real estate to which the testator was entitled consists of the particulars set forth in the ——— Schedule hereto.

7. The defendants have received rents and profits of the testator's real estate, &c., (*in a form similar to that provided with respect to the personal estate.*)

8. The incumbrances affecting the said testator's real estate are specified in the ——— Schedule hereto.

9. The real estates of the testator directed to be sold, have been sold, and the purchase moneys, amounting altogether to \$———, have been paid into Court.

N.B.—The above numbers are to correspond with the numbers in the order after each statement, the evidence produced is to be stated as follows:—

The evidence produced on this account (*or inquiry*) consists of the probate of the testator's will, the affidavit of A.B., filed ——— and paragraph numbered ——— of the affidavit of C.D., filed.

## No. 10.

Appx. L.  
No. 10.AFFIDAVIT VERIFYING ACCOUNTS AND ANSWERING USUAL  
INQUIRIES AS TO REAL AND PERSONAL ESTATE.

In the Supreme Court.

*(Title.)*

We, *A. B.*, of *&c.*, ———, *C. D.*, of *&c.*, ———, *E. F.*, of *&c.*, the above-named defendants, severally make oath and say as follows:—

1. We have according to the best of our knowledge, information and belief, set forth in Schedule I, hereto a full account and inventory of the personal estate of or to which *G. H.* ———, the testator in the judgment (*or* order) dated ———, made in this action (*or* matter) named, who died on the ——— day of ———, was possessed of or entitled at the time of his death, and not by him specifically bequeathed.

2. Save what is set forth in the said Schedule I, and what is by the said testator specifically bequeathed, the said testator was not to the best of our knowledge, information or belief, at the time of his death possessed of or entitled to any debt or sum of money due to him from us, or any of us, on any account whatsoever, nor to any leasehold or other personal estate whatsoever.

3. The said testator's funeral expenses have been paid. The same consists of the items of disbursement numbered ——— and ——— in the account hereinafter referred to (*or if not paid, it should be so stated with the amount due and to whom due.*)

4. We have in the account marked *A.*, now produced and shown to us, according to the best of our knowledge, information and belief, set forth a full account of the personal estate of the said testator, not by him specifically bequeathed, which has come to our hands or to the hands of any of us, or to the hands of any person or persons by our order, or the order of any of us, or for our use, or the use of any of us, with the times when, the names of the persons from whom, and on what account the same has been received, and also a like account of the disbursements, allowances and payments made by us or any of us on account of the said testator's funeral expenses, debts and personal estate, together with the times when, the names of the persons to whom, the purposes for which the same were disbursed, allowed or paid.



Appx. L.  
No. 10.

5. And we, each speaking positively for himself and to the best of his knowledge and belief as to other persons, further say that except as appears in the said account marked A., we have not, nor has any of us, nor have nor has any other person or persons by our order or the order of any of us, or for our use, or the use of any of us, possessed, received, or got in any part of the said testator's personal estate, nor any money in respect thereof, and that the said account marked A. does not contain any item of disbursement, allowance, or payment, other than such as has actually been disbursed, paid or allowed on the account aforesaid.

6. To the best of our knowledge, information and belief, the personal estate of the said testator, now outstanding or undisposed of, consists of the particulars set forth in Schedule II., hereto.

7. Save what is set forth in Schedule II., there is not to our knowledge, information, or belief, any part of the said testator's personal estate now outstanding or undisposed of.

8. We have, according to the best of our knowledge, information and belief, set forth in Schedule III., hereto the particulars of all the real estate which the said G. H. was seized of or entitled to at the date of his death.

9. Save what is set forth in the said schedule, the said testator was not to the best of our knowledge, information or belief, at the time of his death seized of or entitled to any real estate, whatsoever.

10. We have, according to the best of our knowledge, information and belief, set forth in Schedule IV., hereto, the particulars of all the incumbrances affecting the said testator's real estate, and what part thereof such incumbrances respectively affect.

11. We have in the account marked B., now produced and shown to us, according to the best of our knowledge, information and belief, set forth a full account of all the rents and profits of the said testator's real estate which has come to our hands or to the hands of any of us, or to the hands of any person or persons by our order, or the order of any of us, or for our use, or the use of any of us, and the times when, the names of the persons from whom, on what account, in respect of what part of such estate the same have been received, and the times when the same became due, and also a like account of the disbursements, allowances, and payments made by us, or any or either of us, in respect of the said testator's real estate, or the rents and profits thereof, and the times when, the names of the persons to whom, and the purposes for which, the same were made.

12. And we, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, further say that, except as appears in the said account marked B., we have not, nor has any of us, nor has any other person by our order, or the order of any of us, or for our use, or the use of any of us, possessed, received, or got in any rents or profits of the said testator's real estate, nor any money in respect thereof, and that the said account marked B. does not contain any item of disbursement, payment, or allowance, other than such as has actually been disbursed, paid, or allowed, as above stated.

APPX. L.  
No. 10.

---

THE FIRST SCHEDULE above referred to.

1. \$100 cash in the house.
2. \$400 cash at the testator's bankers, Messrs. *A.* and *B.*
3. \$1,000 Dominion of Canada Stock, standing in the testator's name.
4. \$50 due from John James, for half year's rent of house at ———, to 1st May, 1883.
5. \$140 balance remaining due from John Thomas on account of half year's rent of farm at ———, to ———.
6. \$300, a debt due from Samuel Jones on a bond, with interest from ———, at ——— per cent.
7. A leasehold house situate at ———, held under a lease for a term of ———, which will expire on ———, at a rent of \$—— a year, underlet to James Evans for a term which will expire on ———, at a rent of \$50 a year.
8. \$25, half a year's rent due from the said James Evans to ———.

---

THE SECOND SCHEDULE above referred to.

(The particulars to be set forth in the same manner as above.)

---

THE THIRD SCHEDULE above referred to.

(To contain a short particular of the real estate.)

---

THE FOURTH SCHEDULE above referred to.

(To contain a short particular of the incumbrances, and showing what part of the above real estate is subject to each.)

Appx. L.  
No. 11.

## No. 11.

*Account of Personal Estate, being Account A., referred to in Form No. 10.*

A.

In the Supreme Court.

*(Title.)*

This account marked A. was produced and shown to A. B., C. D., and E. F., and is the account referred to in their affidavit sworn this — day of —.

Before me *(to be signed here by Commissioner or officer before whom the affidavit is sworn.)*

## RECEIPTS.

No. of Item.	Date when received.	Names of persons from whom received.	On what account received.	Amount received.
	18 .			\$
1		.....	Found in house.....	
2		Evans and Co....	Balance at bankers....	
3		.....	Half year's dividend on \$1,000 stock.....	
4		John James.....	Half year's rent of house from — to —.....	
5		Samuel Jones....	Bond debt of \$300 and interest from — to —.....	
6		James Evans ....	Half year's rent of leasehold house due —.....	
7		William Williams	Produce of sale of the above leasehold house.....	

## DISBURSEMENTS.

No. of Item.	Date when paid or allowed.	Names of Persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed.
	18 .			\$
1		James Price.....	Undertaker's bill for funeral.....	
2		Messrs. A. & B....	Expenses of Probate....	
3		John George.....	A debt due to him for medical attendance..	
4		James Price.....	Bond debt of \$1,000 and \$25 for interest thereon from — to —.....	

No. 12.

APPX. I.  
No. 12.

*Account of Rents and Profits, being the account B. referred to in No. 10.*

B.

In the Supreme Court.

(Title.)

This account marked B. was produced and shown to A. B., C. D., and E. F., and is the account referred to in their affidavit sworn this — day of —.

Before me (to be signed here by Commissioner or officer before whom affidavit sworn.)

RECEIPTS.

No. of Item.	Date when received.	Names of Persons from whom received.	On what account and in respect of what Part of the Estate received, and when due.	Amount received.
1	18—.	John James.....	Half year's rent for farm in town of —, due —.....	\$
2		Thomas James...	One quarter year's rent of house at —, due —.....	
3		John James.....	Same as No. 1, due. —	

DISBURSEMENTS.

No. of Item.	Date when paid or allowed.	Names of Persons to whom paid or allowed.	For what purposes paid and allowed.	Amount paid or allow
1	18—.	Sun Insurance Office.....	One year's insurance against fire, due —.	\$
2		Thomas Carpenter.....	Repairs at John James' farm.....	
3		James Francis...	City Tax, half year due 10th October.....	

Appx. L.  
No. 13.

No. 13.

RECEIVER'S ACCOUNT

(Title.)

(To accord with the Order.)

The [---] Account of A. B., the Receiver appointed in this Cause [or pursuant to] an order made in this Cause, dated the --- day of --- to receive the rents and profits of the Real Estate, and to collect and get in the outstanding Personal Estate of C. D., the testator [or, intestate] in this Cause, named from the --- day of --- to the --- day of ---.

REAL ESTATE—RECEIPTS.

No. of Item,	Date when received,	Tenant's Names,	Description of premises,	Annual Rent,	Arrears due at .	Amount due at .	Amount received,	Arrears remaining due,	Observations,
1		John Jones....	Home farm in the Town of Norton, in the County of Oxford.	\$	\$	\$	\$	\$	
2		Thomas Jones..	House at Norton, aforesaid.						

PAYMENTS AND ALLOWANCES ON ACCOUNT OF REAL ESTATE.

No. of Item.	Date of Payment or Allowance.	Names of persons to whom paid or allowed.	For what purpose paid or allowed.	Amount.
1		Sun Fire Office.....	One year's insurance of, due.	\$
2		Thomas Carpenter.....	Bill for repairs at house let to Thomas Jones.....	
3		James Francis.....	Allowance for a half year's tax, due.....	\$
			Total payments.....	\$

RECEIPTS ON ACCOUNT OF PERSONAL ESTATE.

PAYMENTS AND ALLOWANCES ON ACCOUNT OF PERSONAL ESTATE.

No. of Item.	Date when received.	Names of persons from whom received.	On what account received.	Amount received.	No. of Item.	Date when paid or allowed.	Names of persons to whom paid or allowed.	For what purposes paid or allowed.	Amount paid or allowed.

APPX. L.  
No. 13.

Appx. L.  
No. 13.

SUMMARY.

Amount of balance due from Receiver on account of real estate on last account.....	\$	C.	
Amount of receipts on the above account of real estate.....	“	“	
	\$	C.	
Balance of last account paid into Court.....	“	“	
Amount of payments and allowances on the above account of real estate.....	“	“	
Amount of Receiver's costs of passing this account as to real estate.....	“	“	
Balance due from the Receiver on account of real estate.....	\$		
Amount of balance due from Receiver on last account of personal estate.....			
Amount of receipts on the above account of personal estate.....	\$	D.	
	\$	“	
Balance of last account paid into Court.....	“	“	
Amount of payments and allowances on the above account of personal estate.....	“	“	
Amount of Receiver's costs of passing this account as to personal estate.....	“	“	
Balance due from the Receiver on account of personal estate.....	\$		

## No. 14.

Appx. L.  
No. 14.

## ORDINARY CONDITIONS OF SALE.

## Conditions of Sale.

1. No person is to advance less than \$—— at each bidding.

2. The sale is subject to a reserved bidding for each lot which has been fixed by the Judge.

3. Each purchaser is at the time of sale to subscribe his name and address to his bidding, and all written notices and communications and summonses are to be deemed duly delivered to and served upon the purchaser by being left for him at such address, unless or until he is represented by a solicitor.

4. Each purchaser is at the time of sale to pay a deposit of \$—— per cent. on the amount of his purchase money to ——, the person authorized to receive the same.

5. Each purchaser is upon application to pay the amount of his purchase money (after deducting the amount paid as a deposit) on or before the —— day of ——, and if the same is not so paid, then the purchaser is to pay interest on his purchase money, including the amount of such valuation at the rate of \$—— per cent. per annum from the —— day of —— to the day on which the same is actually paid. Upon payment of the purchase money in manner aforesaid, the purchaser is to be entitled to possession, or to the rents and profits, as from the —— day of ——, down to which time all outgoings are to be paid by the vendors.

6. If any error or mis-statement shall appear to have been made in the above particulars, such error or mis-statement is not to annul the sale or entitle the purchaser to be discharged from his purchase, but a compensation is to be made to or by the purchaser, as the case may be, and the amount of such compensation is to be settled by the Judge at Chambers.

*(Add to these such conditions respecting the title and title deeds as may be necessary or proper.)*

Lastly. If the purchaser shall not pay his purchase money at the time above specified, or at any other time which may be named in any order for that purpose, and in all other respects perform these conditions, an order may be made upon application at Chambers, for the re-sale of the lot purchased by such purchaser, and for payment by the purchaser of the deficiency, if any, in the price which may be obtained upon such re-sale and of all costs and expenses occasioned by such default.



APPX. I.  
No. 15.

No. 15.

AFFIDAVIT OF RESULT OF SALE.

In the Supreme Court.

(Title.)

I, *A. B.*, of &c., the person directed to sell the estates comprised in the particulars hereinafter referred to, do make oath and say as follows:—

1. I did at the time and place, in the lots, and subject to the conditions specified in the particulars and conditions of sale now produced and shown to me, and marked with the letter *A*, put up for sale by auction the estates described in such particulars. The result of such sale is truly set forth in the bidding paper marked with the letter *B*, now produced and shown to me.

2. The sums set forth in the second column of such bidding paper are the highest sums bid for the respective lots, the numbers of which are set forth in the first column opposite to such respective sums, and the persons whose names are subscribed in the third column of such bidding paper as purchasers were respectively the highest bidders for and became the purchasers of the respective lots the numbers whereof are set opposite to such respective names in the said first column of the said bidding paper at the prices or sums set opposite to their respective names in the said second column thereof.

3. The several lots opposite to the numbers of which I have in the third column of the said bidding paper written the words "not sold" were not sold, no person having bid a sum equal to or higher than the reserved bidding fixed by the said Judge.

4. No person bid any sum whatever for either of the lots opposite the numbers of which I have in the second column of the said bidding paper written the words "no bidding."

5. The said sale was conducted by me in a fair, open, and candid manner, and according to the best of my skill and judgment.

6. I have received the sums set forth in the fourth column of the schedule hereto as deposits from the respective purchasers whose names are set forth in the second column of such schedule opposite the said respective sums in respect of their said respective purchase moneys, leaving due in respect of the said purchase moneys the respective sums set forth in the fifth column of the said schedule.

THE SCHEDULE above referred to.

APPX. L.  
No. 16.

No. of Lot.	Name of purchaser.	Amount of purchase money.	Amount of deposit received.	Amount remaining due.

No. 16.

LIST OF DEBTS ALLOWED.

James v. Jones.

List of Debts.

No. of Entry of Claim.	Names of Creditors.	Addresses.	Amounts allowed for Principal, Interest & Costs.	Total Amount due.
2	James Allen....	Halifax, in the county of Halifax, Surgeon .....	\$100 00	\$106 20
		Interest .....	4 00	
		Costs .....	2 20	
1	Charles Cohen..	Windsor, in the county of Hants, Gentleman, executor of John Thomas.....	\$67 00	\$ 73 40
		Interest from fifth October, 1882, at \$6 per cent.....	4 20	
		Costs .....	2 20	
5	John Dennis and Owen Thomas }	Truro, county of Colchester, Grocers, and co-partners .....	\$100 00	\$171 50
		Interest from 16th October, 1882, at \$6 per cent.....	5 00	
		Another debt.....	62 00	
		Interest .....	2 10	
		Costs .....	2 40	

Appx. L.  
Nos. 17, 18.

## No. 17.

## LIST OF LEGACIES REMAINING UNPAID.

James v. Jones.

## List of Legacies.

Names of Legatees.	Description.	Amount of Principal and Interest.	Total Amount due.
James Oliver.....	Son of Testator, an infant ... Interest .....	\$100 00 7 50	\$107 50
Mary Russell.....	Of Windsor, widow ..... Interest from 1st January, 1880, the death of testator.....	50 00 4 80	
Jane, the wife of John Williams....	Of Halifax, Esq..... Paid in part.....  Interest .....	250 00 50 00  200 00 14 11	54 80   214 11
		Total—\$	

## No. 18.

## LIST OF APPORTIONMENTS AMONG CREDITORS OR LEGATEES.

## Apportionment among Creditors (or Legatees.)

Names of Creditors (or Legatees.)	Addresses.	Amounts before certified to be due and subsequent interest.	Totals due.	Amounts apportioned.
John Jones.....	Halifax, woollen draper... Subsequent interest .....	\$200 00 17 10	\$217 10	\$57 40
Thomas Young and Robert Young ....	Truro, in the County of Col- chester, executors of Wm. Young, deceased Subsequent interest.....	200 00 17 10		
			217 10	57 40
			Total—\$	

No. 19.

Appx. L.  
No. 19.

RECEIVER'S RECOGNIZANCE.

—, of —, of —, and —, of —.

Before our Sovereign Lady the Queen in her Supreme Court of Nova Scotia personally appearing, do acknowledge themselves, and each of them doth acknowledge himself, to owe to — Prothonotary of said Supreme Court at — the sum of —, to be paid to the said — or his executors, administrators or assigns, and unless they do pay the same they, the said — do grant, and each of them doth grant for himself, his heirs, executors, and administrators, that the said sum of — shall be levied, recovered, and received of and from them and each of them, and of and from all and singular the messuages, lands, tenements, and hereditaments, goods and chattels, of them and each of them wheresoever the same shall or may be found. Witness our said Sovereign Lady Victoria by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and so forth, at — the — day of —, 18—.

Whereas, by an order of the said Supreme Court made in a cause wherein — are plaintiffs, and — defendants, and dated the — day of —.

It was ordered that a proper person should be appointed to receive (*or that upon the above-bounden — first giving security he should be appointed receiver of*) the rents and profits of the real estate, and to collect and get in the outstanding personal estate of — in the said order named. And whereas a Judge hath (*approved of the said — as a proper person to be such receiver, and hath*) approved of the above bounden — and — as sureties for the said —, and hath also approved of the above-written recognizance with the under-written condition as a proper security to be entered into by the said — and — pursuant to the said order and Rules of the said Court in that behalf, and in testimony of such approbation the Judge hath signed an allowance in the margin hereof.

Now the condition of the above-written recognizance is such that if the said — do and shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the real estate, and in respect of the personal estate of the said —, at such periods as a Judge shall appoint, and do

Appx. L.  
No. 20.

and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court or a Judge hath directed or shall hereafter direct, then the above recognizance shall be void and of none effect, otherwise the same is to be and remain in full force and virtue.

Taken and acknowledged by the above-named, &c.

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**No. 20.**

AFFIDAVIT VERIFYING RECEIVER'S REPORT.

In the Supreme Court.

(Title.)

I, ———, of ———, the receiver appointed in this cause, make oath and say as follows:—

1. The account contained from page ——— to page ———, both inclusive, in each of the two several books marked with the several letters A. and B. produced and shown to me at the time of swearing this, my affidavit, and purporting to be my account of *the rents and profits of the real estate and of the outstanding personal estate of ———, the testator (or intestate) in this cause, from the ——— day of ———, 18—, to the ——— day of ———, 18—, both inclusive, contains a true account of all and every sum of money received by me or by any other person or persons by my order, or to my knowledge or belief, for my use on account or in respect of the said rents and profits accrued due on or before the said ——— day of ——— on account or in respect of the said personal estate, except what is included as received in my former account (or accounts) sworn by me.*

2. The several sums of money mentioned in the said account, hereby verified to have been paid and allowed, have been actually and truly so paid and allowed for the several purposes in the said account mentioned.

3. The said account is just and true in all and every the items and particulars therein contained, according to the best of my knowledge and belief.

4. *W. X.*, and *Y. Z.*, ———, the sureties named in the recognizance dated the ——— of ——— 18—, are both alive and neither of them has become bankrupt or insolvent, or assigned his property for the benefit of creditors.

No. 21.

APPX. L.  
Nos. 21, 22.

ORIGINATING SUMMONSES.

In the Supreme Court.

In the matter of the estate of *A. B.*, deceased.

Between *C. D.*, Plaintiff,  
and  
*E. F.*, Defendant.

Let *E. F.*, the executor of the said *A. B.*, attend at — Chambers — at the County Court House, at the time specified in the margin (*or* at the foot) hereof, upon the application of *C. D.*, of —, Esq., who claims to be a creditor (*or, as the case may be*) upon the estate of the above-named *A. B.*, for an order for the administration of the personal (*or* real or personal) estate of the said *A. B.*

Dated the — day of —, 18—.

(Seal.)

This summons was taken out by —, of —, solicitors for the above-named *C. D.*

*The following note to be added to the original summons, and when the time is altered by indorsement the indorsement to be referred to as below:—*

NOTE.—If you do not attend either in person or by your solicitor at the time and place above-mentioned (*or* at the place above-mentioned at the time mentioned in the indorsement hereon), such order will be made and proceedings taken as the Judge may think just and expedient.

No. 22.

REQUEST TO SET DOWN CAUSE FOR FURTHER CONSIDERATION.

In the Supreme Court.

*A. v. B.*

I request that this cause, the further consideration whereof was adjourned by order of the — day of —, may be set down for further consideration before Mr. Justice —.

*C. D.*,  
Plaintiff's (*or* defendant's) solicitor.

Appx. L.  
Nos. 23, 24.

**No. 23.**

NOTICE THAT CAUSE HAS BEEN SET DOWN FOR FURTHER  
CONSIDERATION.

In the Supreme Court ———.

*A. v. B.*

Take notice that this cause, the further consideration whereof was adjourned by the order of the — day of —, was on the — day of — set down for further consideration before Mr. Justice — for the — day of —.

Dated, &c.

*C. D.*

Solicitor for ———.

To Mr. ———,  
Solicitor for ———.

**No. 24.**

FORM OF ORDERING ACCOUNTS AND INQUIRIES.

This Court doth order that the following accounts and inquiry be taken and made, that is to say :

1. An account of the personal estate not specifically bequeathed of *A. B.*, deceased, the testator in the pleadings named, come to the hands of, &c.

2. An account of the testator's debts.

3. An account of the testator's funeral expenses.

4. An account of the testator's legacies and annuities, (if any) given by the testator's will.

5. An inquiry what parts (if any) of the testator's said personal estate, are outstanding or undisposed of.

And it is ordered that the testator's personal estate not specifically bequeathed be applied in payment of his debts and funeral expenses in a due course of administration, and then in payment of the legacies and annuities (if any) given by his will.

(If ordered.)

And it is ordered that the following further inquiries and accounts be made and taken, that is to say :—

6. An inquiry what real estate the testator was seized of or entitled to at the time of his death.

7. An account of the rents and profits of the testator's real estate received by, &c. Appx. M.

8. An inquiry what incumbrances (if any) affect the testator's real estate, or any and what parts thereof.

(If sale ordered.)

9. An account of what is due to such incumbrancers as shall consent to the sale hereinafter directed in respect of their incumbrances.

10. An inquiry, what are the priorities of such last-mentioned incumbrances.

And it is ordered that the testator's real estate be sold with the approbation of the Judge, &c., &c.

And it is ordered that the further consideration of this cause be adjourned, and any of the parties are to be at liberty to apply as they may be advised.

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## APPENDIX M.

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### PAYMENT INTO AND OUT OF COURT.

1. Where it is directed by the Court or a Judge that money paid into Court shall be invested, if the same be in the hands of the Prothonotary, it shall be paid over by him to the Accountant General. The Accountant General shall make the investment according to the order of the Court or a Judge, and forthwith report his doings in relation to such investment.

2. The dividends, interest, or income derived from securities in which moneys are invested shall be placed to the same credit as that to which the money was originally paid in.

3. When securities are to be sold, assigned, or in any manner realized, the Accountant General shall, on receipt of the necessary directions, cause the necessary sale, assignment, or realization to be made, and the proceeds resulting therefrom shall be placed to the credit of the cause or matter mentioned in the direction, and the Accountant General shall forthwith report to the Court or to the Judge who has made the order for the sale, assignment or realization, what he has done under such order.



Appx. N.

4. The books kept by the Prothonotaries and by the Accountant General, relating to payments of money into and out of Court, shall be open at all times for inspection by such persons as the Governor-in-Council may appoint to inspect the same.

5. The Accountant General and every Prothonotary shall annually, in the last week of January, furnish to the Court an account showing all balances remaining in their hands or under their control.

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## APPENDIX N.

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### SOLICITORS' COSTS.

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*(In lieu of Attorneys' Costs in Cap. 114, R. S., 4th Series.)*

#### WRITS, SUMMONSES, &C.

Writ of Summons for commencement of action . . . . .	\$2 00
Copy to serve . . . . .	1 00
Indorsement of claim, if special . . . . .	80
Copy to serve . . . . .	40
Concurrent writ of summons . . . . .	1 50
Renewal of a writ of summons . . . . .	1 25
Notice of a writ for service in lieu of service out of the jurisdiction . . . . .	1 00
Writ of Inquiry . . . . .	2 50
Writ of Mandamus . . . . .	2 00
Writ of <i>subpcena ad testificandum</i> , or <i>duces tecum</i> and copy . . . . .	80
Writ of Distringas . . . . .	2 50
Writ of execution, or other writ to enforce any judgment or order . . . . .	1 50
Procuring a writ of execution or notice to the Sheriff, marked with a seal of renewal . . . . .	1 00
Notice thereof to serve on Sheriff . . . . .	50
Any writ not included in the above, and alias and subsequent writs . . . . .	1 50

These fees include all indorsements and copies, or præcipes for the officer sealing them, and attendances to issue or seal, except where otherwise provided, but not the officer's fees.

Summons to attend at Judge's Chambers.....	\$ 75	Appx. N.
Or, if special, at discretion of taxing authority, not exceeding.....	1 20	
Copy for the Judge when required.....	40	
Or, per folio.....	10	
Originating Summons, at taxing authority's discretion, not exceeding.....	2 50	
Copy for Judge.....	40	
Or, per folio.....	10	
Indorsing same and copies under Order LV., Rule 14	1 00	

SERVICES AND NOTICES.

Every necessary notice or demand, and every order, (not otherwise provided for).....	\$1 00
Every copy thereof for service.....	25
Each service, or filing in lieu of service, of any writ, notice, summons, order, interrogatories, or petition, not authorized to be served by post, and requiring service on a party who has not entered an appearance.....	75
Where, in consequence of the distance of the party to be served, it is proper to effect such service through an agent, for correspondence in addition.....	50
Where more than one attendance is necessary to effect service, or to ground an application for substituted service, such further allowance may be made as the taxing authority shall think fit.	
Service, where an appearance has been entered, on the solicitor or party.....	50
Or, if authorized to be served by post.....	30

Where any writ, order, and notice, or any two of them have to be served together, one fee only for service is to be allowed.

In addition to the above fees the following allowances are to be made :—

As to writs, if exceeding two folios, for copy for service, per folio beyond the two.....	\$ 10
As to summons to attend at Chambers, for each copy to serve.....	25
Or, per folio.....	10
As to notices in proceedings to wind up Companies, for preparing or filling up each notice to creditors to attend and receive debts and to contributories to settle list of contributories..	25

<u>Appx. N.</u>	And for preparing or filling up each notice to contributories to be served with a general order for a call, or an order for payment of a call..	\$ 25
	And for drawing notice to be served on contributories or creditors, of a meeting, per folio....	25
	For each copy of the last-mentioned notice to serve, per folio .....	10
	For preparing or filling up for service, in any other cause or matter, each notice to creditors to prove claims, and each notice that payment may be received, specifying the amount to be received for principal and interest and costs, if any .....	25
	Copies, for service, of interrogatories and petitions, and of orders with necessary notices, (if any), to accompany, per folio .....	10

Where notice of filing affidavits is required, only one notice is to be allowed for a set of affidavits filed, or which ought to be filed together.

In proceedings to wind up a Company the usual charges relating to printing shall be allowed in lieu of copies for service where the fee for copies would exceed the charge for printing and amount to more than \$12.00.

Where any appointment is or ought to be adjourned, service of a notice of the adjournment or next appointment is not to be allowed.

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#### APPEARANCES.

Entering appearance .....	\$1 00
If entered at one time, for more than one person, for every defendant beyond the first.....	25
If a person appearing to a writ of summons to recover land limits his defence by his memorandum of appearance, in addition to the above .....	1 00

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#### INSTRUCTIONS.

To sue or defend .....	\$2 00
For statement of claim or special case .....	1 50
For indorsement of writ of summons when no further statement of claim .....	1 50

For originating summons \$1.50 or not to exceed . . . . .	\$3 00	Appx. N.
For defence or further defence . . . . .	2 00	
For counter-claim . . . . .	1 50	
For reply when defendant sets up a counter-claim . . . . .	1 50	
For reply or further reply in any other case with or without joinder of issue . . . . .	1 00	
For confession of defence . . . . .	1 00	
For joinder of issue without other matter . . . . .	80	
For special petition, any other pleading (not being a summons), and interrogatories for examination of a party or witness . . . . .	1 50	
To amend any pleading . . . . .	1 00	
For affidavit in answer to interrogatories and other special affidavits . . . . .	1 00	
For striking special jury . . . . .	1 00	
To appeal against order of Court or Judge, or to make motion for new trial, or other special motion in Court and to appear thereon . . . . .	2 00	
To add parties by order of Court or Judge . . . . .	1 00	
For counsel to advise on evidence when the evidence in chief is to be taken orally . . . . .	1 00	
Or not to exceed . . . . .	3 00	
For counsel to make any application to the Court or a Judge, where no other brief . . . . .	1 00	
Any special instructions in course of the cause or matter, shown to the taxing authority to be necessary, and not otherwise provided for . . . . .	1 50	
For brief on motion for special injunction . . . . .	2 00	
For brief on hearing or trial of action on notice of trial, or notice for judgment given, whether such trial be before a Judge with or without a jury or before an official or special referee, or on trial of an issue of fact before a judge, commissioner or referee, or an assessment of damages . . . . .	4 00	

For such brief, and for brief on hearing of an appeal when witnesses are to be examined or cross-examined, and on argument of motion for new trial or other special motion in Court, such fee may be allowed as the taxing authority shall think fit, having regard to all the circumstances of the case and to other allowances, if any, for attendances on witnesses and procuring evidence.

The fees for instructions for brief are to apply to a hearing on further consideration in Court only where an order for accounts and inquiries was made without such hearing or trial as above mentioned.

## Appx. N.

## DRAWING PLEADINGS AND OTHER DOCUMENTS.

Statement of claim.....	\$1 00
Or per folio.....	20
Defence.....	1 00
Or per folio.....	20
Counter-claim.....	80
Or per folio.....	20
Reply, with or without joinder of issue, confession of defence, joinder of issue without other matter, and every other pleading (not being a petition or summons), and amendments of any pleading.....	80
Or per folio.....	20
Particulars, breaches and objections, when required, and one copy to deliver.....	80
Or such amount as the taxing authority shall think fit, not exceeding per folio.....	15
If more than one copy to be delivered, for each other copy per folio.....	10
Deed.....	5 00
Special case, whether original or in an action, affidavits in answer to interrogatories, and other special affidavits, special petitions and interrogatories, per folio.....	20
Brief on trial or hearing of cause, argument for new trial, appeal, or other special argument in court or on trial of an issue of fact, assess- ment of damages, examination of witnesses, special case and petition before a Court or Judge, Sheriff, Commissioner, Referee, Exam- iner or Officer of the Court, when necessary and proper, in addition to pleadings, including necessary and proper observations, per folio.	20
Brief on application to add parties.....	1 00
Or per folio.....	20
Brief on further consideration, per sheet of 10 folios.	1 00
Accounts, statements and other documents for Chambers, when required, not exceeding per folio.....	15
Advertisements, including attendance therefor.....	1 00
Bill of costs for taxation, including copy.....	50
Brief in default cases may be allowed at.....	2 00
One letter to each defendant, before action, if actually sent.....	50
Other letters in course of the cause or matter to opposite party or his solicitor, when necessary in the opinion of the taxing authority, each	50

COPIES.

Appx. N.

Of pleadings, briefs and other documents, where no other provision is made, per folio .....	\$ 10
Where, pursuant to Rules of Court, or on any other proper occasion, any pleading, special case, appeal, evidence, or other matter is printed, the solicitor of the party printing shall be allowed for a copy for the printer (except when made by the officer of the Court) and the opposite party shall be allowed, for perusal and ascertaining the correctness thereof, and in lieu of all allowances for such exhibits and other documents as he may furnish for printing, as part of the case, per folio .....	15
To the Solicitor of the party printing, for examining the proof print, per folio .....	10
And for printing, the amount actually and properly paid to the printer, not exceeding, per folio	20

And where any part shall properly be printed in a foreign language, or as a fac-simile, or in any unusual or special manner, or where any alteration in the document being printed becomes necessary after the first proof, such further allowance shall be made as the taxing authority shall think reasonable.

These allowances are to include all attendances on the printer.

PERUSALS.

Of statement of claim, defence, reply, joinder of issue and other pleading (not being a petition in a pending cause or matter, or summons, other than an Originating Summons), by the solicitor of the party to whom the same are delivered .....	\$1 00
Or per folio .....	10
Of amendment of any such pleading .....	1 00
Or per folio .....	10
Of interrogatories to be answered by a party, by his solicitor .....	1 00
Or per folio .....	10
Of special case, by the solicitor of any party, except the one by whom it is prepared .....	1 00
Or per folio .....	10

<u>Appx. N.</u>	Of copy order to add parties, notice of defendant's claim against any person not a party to the action under Order XVI., Rule 50, and of defendant's defence and counter-claim served on a person not a party under Order XXI., Rule 13, by the solicitor of the party served therewith, and in these several cases the perusal of the plaintiff's statement of claim is also to be allowed, unless the solicitor has been previously allowed such perusal..	\$1 00
	Or per folio .....	10
	Of notice to produce and notice to admit, by the party served .....	1 00
	Or (if to admit facts) under Order XXXI., Rule 4, per folio .....	20
	Of affidavit in answer to interrogatories, by the solicitor of the party interrogating, and of other special affidavits by the solicitor of the party against whom the same can be read, per folio .....	08

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ATTENDANCES.

To obtain consent of next friend to sue in his name, or of a guardian <i>ad litem</i> .....	1 00
To deliver, or file in lieu of delivery, any pleading, (not being a petition or summons), and a special case .....	50
To inspect, or produce for inspection, documents pursuant to a notice to admit .....	1 00
Or per hour .....	1 00
To examine and sign admissions .....	1 00
To inspect, or produce for inspection, documents referred to in any pleading, notice in lieu of pleading, or affidavit pursuant to notice under Order XXX., Rule 14 .....	1 00
Or per hour .....	1 00
To obtain or give any necessary or proper consent ..	1 00
To strike special jury .....	1 00
To obtain an appointment to examine witnesses....	50
On examination of witnesses before any examiner, commissioner, officer or other person, per witness .....	2 00
Or, according to circumstances, not to exceed .....	10 00
Or, if without counsel, not to exceed .....	15 00
On deponent's being sworn, or by a solicitor or his clerk to be sworn, to an affidavit in answer to interrogatories, or other special affidavit ..	50

On a summons at Chambers .....	\$ 1 00	Appx. N.
Or, according to circumstances, not to exceed .....	4 00	
On counsel with brief, &c .....	50	
On consultation or conference with counsel .....	1 00	
Or, not to exceed .....	2 50	
To enter or set down action, special case, or appeal for hearing or trial .....	50	
In Court, on motion of course .....	1 50	
To present petition for order of course and for order	1 50	
In Court on every special motion .....	2 00	
Or, according to circumstances, not to exceed .....	5 00	
On special case, or special petition, or application adjourned from Chambers when on the docket for the day and likely to be heard .....	1 00	
Or, according to circumstances not to exceed .....	4 00	
On hearing or trial of any cause or matter, or issue of fact in the town where the solicitor resides or carries on business, whether before a Judge, with or without a jury, or commis- sioner or referee, or on assessment of damages when on the docket for the day .....	1 00	
When heard or tried .....	2 00	
Or, according to circumstances, not to exceed .....	10 00	
To hear judgment when same adjourned .....	1 00	
On taxation of costs .....	1 00	
To obtain or give an undertaking to appear .....	1 00	
To present a special petition, and for same answered	1 00	
For preparing and drawing up an order made at Chambers in proceedings to wind up a Com- pany, and attending for same and to get same entered .....	1 00	
And for engrossing every such order, per folio .....	10	

NOTE.—An order of course means an order made on an *ex parte* application, and to which a party is entitled as of right on his own statement and at his own risk.

To examine an abstract of title, with deeds, per hour, in a cause or matter .....	\$ 1 50
Every other attendance necessary to be made by the solicitor .....	1 00
If the same can be made by a clerk .....	50

In addition to the above an allowance is to be made for the necessary expense of postages, carriage and transmissions of documents, telegrams, maps, plans and surveys, and the reasonable expense of executing a commission to examine witnesses.



Appx. N.

The Sheriff is to be allowed \$1 for serving, executing and making return of every order which, by the Rules, he is required to serve, execute and return.

The Prothonotary is to be allowed the same fee for sealing as he was allowed before the commencement of the Act for signing and sealing, and the same fee for sealing an order as was allowed for signing and sealing a writ, where an order has been substituted for a writ by the Rules.

On the certificate of the Judge before whom the trial or the examination of a witness or witnesses has taken place, a reasonable sum may be allowed for the expense of a short-hand reporter, where, for any special reason, a reporter has been ordered by the Judge to be procured.

COUNSEL FEES.

(Contested matters.)

For settling any claim, statement of defence, or other pleading, special case, interrogatories, petition, &c., (not being a petition on which an <i>ex parte</i> application is to be based).....	\$ 2 00
Or not to exceed.....	10 00
For any examination, motion or argument in Court or at Chambers where attendance of counsel was necessary.....	2 00
Or not to exceed.....	10 00
For any necessary consultation in the cause or matter.....	2 00
Or not to exceed.....	10 00
For examination of witnesses before trial, for each day.....	5 00
Or not to exceed.....	15 00
For trial of any cause, or of any issues, before a Judge, (with or without a jury), arbitrator, master, referee, or on assessment of damages, or argument of motion for new trial, or of appeal, or of other special motion before the Court, for the first day.....	15 00
Or not to exceed.....	70 00
For each day after the first.....	10 00
Or not to exceed.....	50 00
For attending to hear judgment, if reserved.....	1 00
Or not to exceed.....	5 00

When services are such that by the foregoing tables they may be charged for either by solicitor or by counsel,

fees shall be charged in addition to the solicitor's fees only when counsel other than the solicitor or members of the firm of the solicitor conducting the proceedings are actually employed, but where the same practitioner, or firm, acts as both counsel and solicitor he may, in lieu of a solicitor's fee, charge counsel's fees in any proceeding in which such fee might be allowed.

APPX. N.

In fixing counsel fees regard is to be had to the fact of more than one counsel being engaged where such is the case, provided that it appear to the taxing authority that more than one counsel was necessary, and provided the nature of the cause is such in his opinion as to warrant a larger allowance by reason of there having been more than one counsel.

The following are the items taxable by a solicitor in ordinary cases of default of appearance (liquidated demand):—

Instructions to sue.....	\$2 00
Letter to defendant.....	50
Writ of Summons.....	2 00
Copy to serve.....	1 00
Instructions for indorsement (if special).....	1 50
Indorsement of claim (if special).....	80
Copy to serve.....	40
Attending on return.....	50
"    to search.....	50
"    to enter judgment.....	50
Brief.....	2 00
Costs and attending to tax.....	1 50

If the plaintiff in any action not brought upon contract, express or implied, and formerly deemed an action of trespass, or trespass on the case, or in any action for breach of promise of marriage, shall recover less damages than the sum of eight dollars on the trial of any issue, or on inquiry on default, he shall not recover any costs unless the Judge before whom the issue is tried or the assessment of damages made, shall certify that the action was brought to try a right besides the mere right to recover damages for the trespass or grievance for which the action was brought, or that the trespass or grievance was wilful and malicious, or that the action was not frivolous and vexatious, and that the plaintiff had actually sustained damage to the amount recovered, and had by notice in writing demanded compensation therefor eight days before action brought, but

Appx. O. nothing in this rule shall be construed to deprive any plaintiff of his costs in any action for trespass on any lands, or for entering any lands in respect of which any notice not to trespass thereon shall have been previously served on or left at the last place of abode of the defendant, by or on behalf of the owner or occupier. (P. A. 262.)

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APPENDIX O.

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- (1.) The several Rules, Orders and Forms contained in the Schedule and Appendices to "The Nova Scotia Judicature Act, 1884."
- (2.) The Rule of the Supreme Court of 3rd Dec., 1855.
- (3.) The Rules of the Supreme Court of 30th Nov., 1857.
- (4.) The Rule of the Supreme Court of 15th Dec., 1858.
- (5.) The Rule of the Supreme Court of 25th July, 1859.
- (6.) The Rule of the Supreme Court of 3rd Aug., 1863.
- (7.) The Rule of the Supreme Court of 4th July, 1864.
- (8.) The Rules made and pronounced by the Judge in Equity, 3rd Feb., 1869.
- (9.) The Rules of the Supreme Court of 6th Jan., 1870.
- (10.) The Rule of the Supreme Court of 12th Aug., 1873.
- (11.) Chapters 13 and 14, Acts of 1876.
- (12.) Chapter 4, Acts of 1878.
- (13.) Chapter 19, Acts of 1879, excepting sections 6, 7, 17, 18.
- (14.) Chapter 13, Acts of 1880, excepting sections 14, 15, 16, 17, 22, 27.
- (15.) Chapter 2, Acts of 1882, excepting section 7.
- (16.) Chapter 89, Revised Statutes, 4th Series.
- (17.) Chapter 94, Revised Statutes, 4th Series, excepting section 196.
- (18.) Chapter 95, Revised Statutes, 4th Series.
- (19.) Chapter 97, Revised Statutes, 4th Series.

## CHAPTER 105.

## OF THE COUNTY COURTS AND PROCEDURE THEREIN.

1. There shall continue to be in this Province, Courts of Law and of Record, to be called County Courts, County Courts continued.

2. For the purposes of this Chapter, this Province shall be divided into seven districts, to be made up as follows :— Division of Province into districts.

*District Number One* :—Of the County of Halifax.

*District Number Two* :—Of the Counties of Lunenburg, Queens and Shelburne.

*District Number Three* :—Of the Counties of Annapolis, Digby and Yarmouth.

*District Number Four* :—Of the Counties of Kings, Hants and Colchester.

*District Number Five* :—Of the Counties of Pictou and, Cumberland.

*District Number Six* :—Of the Counties of Inverness Antigonish and Guysborough ; and

*District Number Seven* :—Of the Counties of Cape Breton, Victoria and Richmond.

3. There shall continue to be one Judge for each district, who shall reside within the district for which he is appointed, and who shall hold office during good behavior. Every such Judge shall be a barrister of the Supreme Court of the Province of not less than seven years' standing. One Judge for each district. Qualification.

4. The Judges of the several districts shall preside over the Courts to be held in the counties comprised within their respective districts, and such Courts shall be held at such times and in such places as the Governor-in-Council may have heretofore appointed, or shall hereafter appoint, by proclamation. Governor-in-Council to appoint time and place of holding Courts.

5. The terms or sittings of such Courts in the respective counties shall continue so long as the business shall require, but not to a date later than the second day before the day appointed for opening the Court at the next place to which the presiding Judge at such Court shall be about to proceed for the purpose of holding a Court. Length of sittings of Courts.

6. The Governor-in-Council may by proclamation from time to time alter, vary and re-arrange the times and places in the several districts for holding the County Courts ; and may also proclaim additional times and places for holding such Courts, and may from time to time dispense with the holding of the same. Until the Governor-in-Council shall Governor-in-Council may alter times and places of holding Courts.

CHAP. 105. make proclamation to the contrary the County Courts shall be held in the several counties at the times and in the places at and in which by proclamation they have been heretofore held.

Clerks appointed by Governor-in-Council. 7. Clerks for the several counties in each district shall be appointed by the Governor-in-Council, and each clerk shall give security in the same manner as Prothonotaries, and shall hold office during pleasure, and shall be paid by fees: Provided always that if an attorney of the Supreme Court shall be appointed to such office he shall not practise in any of the Courts of the Dominion during the term of his incumbency. The clerks who hold office at the date of the passing of this Chapter shall be deemed to have been duly appointed under it.

Proviso,

Deputy clerk for each section of County. 8. The Governor-in-Council may require the clerk to appoint a deputy in each section of the county in which a Court is held, for whose good conduct the clerk shall be responsible; and the deputy shall receive from the clerk such compensation for his services as may be agreed upon between the clerk and his deputy, and the clerk shall have power in case of absence from home, sickness, or being otherwise unable to attend to his duties, to appoint a deputy to act for him, for whose conduct he shall be responsible.

Clerk may adjourn Court on account of absence of Judge. 9. Whenever by reason of unavoidable absence of the Judge, a County Court cannot be held, the clerk or his deputy shall adjourn the Court to such day as he may deem convenient; and he shall enter in the minutes the cause of such adjournment; and whenever, by reason of sickness, disability, absence by leave, or other cause, any Judge of a County Court shall be unable to act, or shall be disqualified from acting, such Judge may call in and designate any other Judge of any other County Court in this Province to act therein, and such Judge so called in and designated as aforesaid shall have the same powers as the regular Judge of such Court would otherwise have had.

Judge not to practise profession. 10. No judge of any such Court shall practise, carry on, or conduct any business in the profession or practice of the law, while being such Judge, on pain of forfeiture of his office.

Judge to be sworn. 11. Every Judge hereafter appointed shall take the following oath, before some person appointed by the Governor-in-Council to administer the same, that is to say :

Form of oath, "I, A. B., do swear that I will truly and faithfully, according to my skill and knowledge, execute the several duties, powers and trusts of a Judge of the County Courts in the Province of Nova Scotia."

12. The practice, forms and modes of procedure, when CHAP. 105. not herein provided for, shall be according to the practice of the Supreme Court of this Province from time to time, and the Judges of such County Courts shall be governed by the decisions of the Supreme Court of Nova Scotia, and the Supreme Court of Canada. Practice of Supreme Court to prevail.

13. The Judge of each County Court shall be *ex officio* a justice of the peace in and for the district in which he is Judge, but shall not issue any civil process in his capacity as such justice. Judges ex officio Justices of the Peace.

14. Only attorneys of the Supreme Court may practise in the County Courts as attorneys, but a party to a cause or application may prosecute or defend or appear in person, subject to the same rules of law as are in force in the Supreme Court. Attorneys of Supreme Court to practise.

15. The Governor-in-Council shall provide seals for the various County Courts; and the Clerk of each County Court shall provide all necessary books for the records of such Court, which shall be approved of by the Judge. The seals now established for such Courts shall remain until the same shall be altered under the authority of this Chapter. Seals provided by Governor-in-Council.

#### JURISDICTION.

16. The Court shall not have cognizance of any action—

- (1.) Where the title to land is brought in question.
- (2.) In which the validity of any devise, bequest or limitation is disputed, except as hereinafter provided.
- (3.) For criminal conversation or seduction.
- (4.) For breach of promise of marriage.

Actions not within the jurisdiction of Court.

17. Subject to the exceptions in the last-preceding section, the County Court shall have original jurisdiction and hold pleas in all actions *ex contractu* where the debt or damage does not exceed four hundred dollars, and in case of debt where it is not less than twenty dollars; and in all other actions where the damages claimed do not exceed two hundred dollars; and in all actions on bail bonds to the Sheriff in any case in the County Courts, whatever may be the penalty or amount, sought to be recovered; and in all actions against a Sheriff, or any officer of the County Court for any nonfeasance or malfeasance in connection with any matter transacted in the County Courts; but the jurisdiction hereby conferred is declared to be concurrent with that of the Supreme Court, except as to actions of debt or assumpsit in which the cause of action is less than eighty dollars, which shall only be brought to the Supreme Court by way of appeal from the County Court. Jurisdiction of Courts defined.

## CHAP. 105.

Appeals to County Courts.

18. All appeals from the Justices, Stipendiary Magistrates, City and Municipal Courts, and from all decisions, orders, and judgments of Justices, Stipendiary Magistrates, and from orders of commissioners for giving relief to debtors confined in jail under process issued from the Justices, Stipendiary Magistrates, or the City or Municipal Courts, or under process issued from the County Courts, shall be to the County Court sitting in the county where the cause appealed was originally tried or in which the debtor was confined.

Summary jurisdiction of Supreme Court abolished.

19. The summary jurisdiction of the Supreme Court is abolished except as to summary cases now pending therein. Appeals from any order of filiation, judgment, or order of justices of the peace in bastardy cases, and from refusal to make such orders, and appeals from orders or decisions relating to the removal of paupers, shall be to the next sitting of the County Court to be held in the county where such order was made; and the Judge shall have power to alter, amend, or set aside the order of filiation, or where overseers of the poor are appellants, to make such order of filiation as the circumstances of the case demand. An appeal from the decision, order, or refusal to make an order, of the said Judge in the cases mentioned in this section may be taken to the Supreme Court, and nothing in this Chapter contained shall be construed to prevent or to have been intended to prevent any such appeal.

Appeal.

Executor, &c., may sue and be sued, &c.

20. Any executor or administrator may sue and be sued in any of the County Courts in like manner as in the Supreme Court, and judgment and execution shall be such as in the like case would be given or issued in the Supreme Court, and he may be sued for the amount or part of the amount of a distributive share, duly ascertained by the proper court, under an intestacy, or of any legacy under a will, provided in all cases that the cause of action is within the jurisdiction of the County Court as to amount.

Assessment of damages.

21. Damages in case of default in actions of tort may be assessed before the Court in term, or a Judge at Chambers, due notice being given for the number of days and in the manner required for notices of trial. But the Judge may, if he sees fit, order a jury to be summoned to assess such damages, or may direct a writ of inquiry to issue, returnable before the Court or County Judge at Chambers, or the Sheriff of the county, and the jury shall be summoned and drawn in the like manner, consist of the same number, and be subject to the same rules as nearly as possible, as other juries in the County Court.

Writs of *certiorari* may issue.

22. Writs of *certiorari* shall issue from the County Court of the county where the original cause originated

or was tried, in the same manner as writs of *certiorari* from the Supreme Court. CHAP. 105.

23. No statement of defence, reply, or other pleading, whereby the title to any land, or to any rent, duty or other custom or thing relating to or issuing out of lands or tenements, is brought in question, shall be received by any County Court, without an affidavit thereto annexed that the same is not pleaded vexatiously, nor for delay, nor for the mere purpose of excluding the Court from jurisdiction, but that the same contains matter which the deponent believes to be necessary for the party pleading to enable him to go into the merits of the case, and is true. Pleadings as to title must be verified.  
Proceedings thereon.

(1.) If in the opinion of the Judge it shall appear that the title to land comes *bona fide* in question, he shall then direct all proceedings in said cause in the County Court to be stayed, and shall certify to the Supreme Court all the papers and pleadings filed in said cause, and that in his opinion the question of title to land has *bona fide* come in dispute, and thereupon the clerk shall transmit to the Prothonotary of the county in which the lands lie, such papers, pleadings, and certificate, and thereafter the Supreme Court shall have power and jurisdiction to try the said cause in the same manner and subject to the same rules as if the said cause had been originally commenced in the Supreme Court.

(2.) The cause mentioned in the next preceding subsection so transferred from the County Court to the Supreme Court shall be considered to be in the Supreme Court on and after the date of the Judge's certificate. The costs which may have been incurred in the County Court shall be costs in the cause.

24. The defence that the claim sued for is below or above the jurisdiction of the Court shall only be taken advantage of by being specially pleaded to the jurisdiction in the statement of defence. Defence as to jurisdiction must be pleaded.

25. Such defence need not be verified by affidavit, and may be pleaded with other defences; and if no such defence be pleaded, the Judge shall permit the plaintiff to reduce his claim to an amount within the jurisdiction of the Court, and the cause shall thereupon proceed; and he may give judgment for the amount proven, although it be below twenty dollars. Such defence need not be verified.

26. When the judge is satisfied in appeals from the justices' and stipendiary magistrates' courts, that the title to land is *bona fide* brought in question, and not set up merely to defeat the action, he shall dismiss the action, and the Judgment in certain cases.



CHAP. 105. defendant shall have execution for his costs accordingly, otherwise the cause shall proceed as if no such defence was set up.

Order for delivery of personal property.

27. In all cases where the property or effects distrained or sought to be recovered, or the plaintiff's claim or demand, does not exceed four hundred dollars, and in case the title to land is not *bona fide* brought into question, an order for replevin may issue from the County Court of any county wherein such property, goods or other effects have been distrained, taken, or detained.

PROCEDURE GENERALLY.

Process, how issued.

28. All process, mesne or final, issued out of any County Court shall be sealed by the clerk of the County Court where the same is issued, or his deputy, and shall be directed, executed, and made returnable in the like manner and time as if issued out of the Supreme Court; but when the Sheriff is a party to a cause all process shall be executed by a coroner.

Clerk and deputy to have powers of Prothonotary.

29. The clerk of each Court, and his deputy, shall have and exercise, in reference to proceedings in such Court, the same powers as the Prothonotary of the Supreme Court; and commissioners to take affidavits in the Supreme Court shall be commissioners for the like purpose in the County Court.

Practice and procedure of Supreme Court to apply to County Court.

30. Every Act of this Province and all Rules made under the authority thereof, relating to the depositions of witnesses, to the proceedings in replevin, to evidence, to the service of process, to garnishee proceedings, to practice and procedure, and to any other matter or thing whatever connected with the administration of justice, in the Supreme Court, shall apply to this Court when not inconsistent with the provisions of this Chapter.

Garnishee proceedings in County Court.

31. When the judgment on which garnishee proceedings are sought to be founded has been obtained in the County Court, the County Court alone where the garnishee resides shall have the garnishee jurisdiction conferred on the Supreme Court from time to time. When the judgment shall have been obtained in the Supreme Court, the Supreme Court alone shall have jurisdiction.

Absconding Debtors and Foreign Companies.

32. The County Court or any Judge thereof shall have and exercise all the powers and authority conferred on the Supreme Court by Orders XLVI. and XLVII. of "The Rules of the Supreme Court, 1884," as contained in Chapter 104, Revised Statutes, Fifth Series, in respect of "Suits against Absent or Absconding Debtors," and "Suits against Foreign Companies" in all causes of action cognizable by the County Court, where the affidavit shows a cause of

action within the jurisdiction of the County Courts as to amount; and the Sheriff and all other officers of the County Courts shall be empowered and be liable to exercise and perform all the duties and offices conferred and imposed upon such officers in the Supreme Court by said Orders. CHAP. 105.

33. The County Courts may issue writs of execution and writs of *subpœna*, and other writs, into any other county, to be served or executed therein, and all such writs shall be of equal force as if the same had issued from the Court of the county to or into which they may be issued. Writs from County Courts may issue into other counties.

34. The clerk of each Court shall file all writs and papers, and shall keep a book in which he shall enter all causes and all rules and orders made therein, and shall also keep a judgment book in which every judgment rendered in his Court shall be entered, a copy of which judgment, duly certified by him, shall be evidence of the same in all courts in the Province to the same extent as the copies of the like entries in the Supreme Court are evidence. Clerk to keep judgment book, &c.  
Certified copy, evidenc.

35. The clerk of the County Court, or his deputy appointed during his illness or absence, shall furnish when required so to do a certificate signed by him of such judgment, containing the like particulars as are required in certificates of judgment given by Prothonotaries of the Supreme Court, and such certificate, after registration in the office of the Registrar of Deeds in any county or district, shall have the like force and effect in binding the lands of the person against whom the judgment was recovered, as a certificate granted by the Prothonotary out of the Supreme Court has of binding the lands of a person against whom a judgment has been recovered in that Court. The clerk of the County Court, or his deputy appointed during his illness or absence, may tax costs, and enter, sign and date, in the Judgment Book of the county wherein he resides, in the form used in the Supreme Court, judgments in undefended cases brought for the recovery of debts, by confession, or on default, in such County Court, where particulars are annexed to the writ, which shall be as valid as if signed by a Judge. Writs of execution shall be as near as may be in the same form, and shall have the like force and effect, as those issued out of the Supreme Court; and when lands are levied upon they shall be advertised, sold and conveyed by the Sheriff, in the same manner and form as under executions issued out of the Supreme Court. Clerk to furnish certificate of judgment.  
Certificate when registered to bind lands.  
Execution same as in Supreme Court.

36. The clerk of the County, or his deputy, wherein the Judge resides, shall keep a book, to be called the "District Judgment Book," wherein shall be entered any judgment given which appertains to the County Court of any other county in the district, which shall be signed District judgment book to be kept.

CHAP. 105. by the Judge in the usual manner; and the clerk, or his deputy, shall forthwith transmit to the clerk of the county in which such judgment is required to be entered, a correct transcript of the Docket of judgment; and the clerk to whom the same may be transmitted shall copy such judgment into the County Judgment Book, and file the transcript with the papers in the cause, and the entry so made from the transcript shall have the like effect as if the same had been signed by a Judge in the Judgment Book into which it shall be so copied.

Power to change  
place of trial.

37. The Judge shall have power on cause shown, according to the practice of the Supreme Court, to order the place of trial to be changed in any cause to the County Court of any other district, and that the cause be sent for hearing to such other County Court, and the clerk of the Court, or his deputy, shall forthwith transmit by post, to the clerk of the Court to which the cause is sent, all papers and proceedings in the cause on file in his office, and a certified copy of the order for changing the place of trial; and such cause shall be dealt with in such Court as if originally brought therein.

Appellant to give  
notice of trial.

38. The appellant shall, in all causes after the first term, give the appellee notice of trial, as in causes brought in the County Court. Notice of trial shall be given in all causes in the County Court; and although the amount sued for shall be under eighty dollars.

Notice of trial.

39. Notices of trial shall in all cases designate the place within the county at which, and the time when, the plaintiff intends to try his cause, and whether it is for the trial of the cause or matter, or of issues therein; but a Judge, at Chambers or in Court, on application, shall have power to remit a cause or issue to any other part of the county where the Court is holden, upon the like grounds, and in accordance with the same practice as would apply to a change of the place of trial in the Supreme Court. The costs of such application shall be in the discretion of the Judge.

Judge to hold  
Chambers.

40. The Judge of each district, except when on circuit, shall hold Chambers for the transaction of the Chamber business of his district, or for the transaction of the business of any other district, whenever by reason of sickness, disability, absence, or other cause, the Judge of such other district shall be unable to act. Such Chambers may be held in the shire town, or in any other town or place where a Court is held in the county wherein the Judge resides, and except when engaged in holding Courts elsewhere he shall set apart one day in each week on which to hold the same, and the Chamber sittings may be

continued from day to day, until the docket of causes for trial at such chambers or sittings is concluded, but no Judge shall be obliged to hold such chambers during the time when the Judges of the Supreme Court have midsummer vacation. CHAP. 105.

41. All proceedings in lieu of demurrer, motions, and special cases may be argued at sittings, term, or chambers, as the judge shall direct. Demurrers, motions, &c., when argued.

PROCEEDINGS AGAINST TENANTS, &C.

42. The County Courts and all the Judges thereof shall have and exercise all the powers conferred upon the said Courts by the chapter of the Revised Statutes, fifth series, "Of Forcible Entry and Detainer," notwithstanding that the title to land is brought in question in any cause or action instituted under the provisions of said chapter. Jurisdiction in cases of forcible entry, &c.

43. When any tenant shall, after the expiration or other determination of his tenancy, refuse to deliver up possession of the premises to the landlord, or to the person entitled to the immediate possession of the premises, such landlord or person so entitled to the immediate possession, or his agent or attorney, may apply to the Judge of the County Court in the district where the premises are situate, and having made oath that such tenant has held and occupied the premises designated in the affidavit for a certain period then expired, and that due notice to quit, when necessary, has been given, such Judge shall issue a summons in the form in schedule A., giving at least fourteen days' notice, to be served with a copy of the affidavit on the tenant, or by leaving the same with some adult person of the household living in his dwelling house, to show cause why he holds over. If the tenant neglect to attend, or attend and no sufficient cause be shown, and on hearing the parties, the Judge may issue his warrant, in the form in schedule B., to the sheriff, directing him to deliver possession of the premises to the landlord or party entitled to the immediate possession, to be executed by him according to the terms of the warrant; and the costs of such proceeding shall be taxed and allowed, and payment thereof may be enforced under the warrant. Proceedings in case of overholding.

44. The sheriff's fees for executing the warrant under the last preceding section shall be the same as for executing a writ of possession out of the Supreme Court, and all such fees shall be included in and recoverable under the warrant issued under the same section. Sheriff's fees for executing warrant.

45. The jurisdiction of the City Court for the City of Halifax, in all cases of torts, and for forcible entry and Jurisdiction of Halifax City Court.

CHAP. 105. detainer is abolished, and the same is hereby vested in the County Court for district number one.

CHAMBER TRIALS.

Chambersittings  
for trials at Hal-  
ifax.

46. The Judge of district number one shall designate a day in each month, in which he will hold chamber sittings for the trial of appeal or summary causes (where the amount claimed does not exceed forty dollars) which the plaintiff shall desire to bring on to trial before the then next sittings or term of the County Court in Halifax. The Judge may in his discretion from time to time, alter and change the day for holding such chamber sittings, and such chamber sittings shall continue till all the cases on the docket regularly entered for the first day of such chamber sittings shall have been called, and if ready for trial, tried. The Judge may deliver judgment on the trial, or at a subsequent day, or at the next ensuing term, in his discretion.

Chamber sittings  
for trials in other  
districts.

47. In any other district than district number one the Judge, by consent of parties, may try any cause at chambers, at such time and place within the county in which the place of trial is stated to be as the parties or their attorneys shall by memorandum in writing under their hands agree to, and judgment in any cause so tried may be delivered on the trial or at a subsequent day, or at the next ensuing term in the county, as the Judge in his discretion shall see fit. And from every such decision or judgment an appeal may be taken to the like Court, and in the same manner, and subject to the same provisions, as if the cause had been tried at the regular term of the Court.

Costs of the day  
for not proceed-  
ing to trial.

48. Any plaintiff, defendant, or party having given notice of trial, who shall not proceed and try his cause, pursuant to said notice, shall pay the opposite party the costs of the day to be taxed, and execution shall issue therefor.

What notice of  
trial necessary.

49. Ten days' notice of the time and place of such trial shall in all cases be given; and in all causes for trial at chambers in Halifax such cause shall be entered with the clerk of the Court at Halifax, on or before the hour of four o'clock in the afternoon of the day week previous to such trial, and no cause not so entered shall be then tried unless on special cause shown the Judge shall deem it advisable to dispense with such entry.

Penalties for  
non-attendance  
of witnesses.

50. All persons required to attend and give evidence at such trial, or to produce papers, deeds, or other documents

thereat, under any process, subpoena, rule or order of the Court, and who shall not so attend and give evidence, or shall not produce such papers, deeds or documents, shall be subject to the same penalties as if the trial of such cause had taken place in sittings, and the Judge shall have the same control over the proceedings. CHAP. 105.

51. The vacation of the Supreme Court shall apply to the County Court for district number one, and no trials or chamber sittings shall be held during said vacation, nor any business transacted, except such as relates to the liberty of the subject or is *ex parte*. Supreme Court vacation to apply to District number One.

## TRIALS, ETC.

52. In any cause tried elsewhere than in the County of Halifax either party shall be entitled to a trial by jury on application to the Judge at chambers ten days previous to the opening of the Court for which the said cause stands for trial, and upon such application being made the Judge shall make an order to the clerk requiring him to summon a jury for the trial of such cause. Provisions for trial by jury elsewhere than in Halifax.

53. The clerk of the Court in every county, excepting the County of Halifax, shall, on or before the first day of March in every year, by himself or his deputy, cause as many lists to be made as there are places within such county where trials in the County Court are ordinarily held, said lists to contain the name and addition of all persons residing within such polling district in which the Court is held, qualified to serve as jurors in the Supreme Court, and the name of every person whose name appears upon such list shall be written upon a separate piece of paper and folded up so that the same cannot be read, and shall be placed in a box to be provided as a jury box for such place. On being thereto ordered by the Judge, the clerk shall, in the presence of ~~two~~ justices to be appointed beforehand for that purpose by the Municipal Council at the general meeting, after well mingling the names in such box, draw therefrom without reading the same or any of them, the names of seven persons, who shall be summoned by the Sheriff to attend at such place, and shall be the jury for the trial of the said cause in which such order has passed. Jury, how drawn elsewhere than in Halifax.

54. Sections 55 and 56 of this Chapter in so far as the same are in conflict with the provisions of the two preceding sections shall not apply to causes tried in counties other than Halifax. Certain section limited.

## CHAP. 105.

Proceedings if  
jury is ordered  
in Halifax.

55. In case a jury is ordered, the sheriff or his deputy shall summon ten men qualified and eligible to serve as petit jurors, being within five miles from the court house where the same is to be tried, to attend at some day during the term or sittings to be named by the Judge, and the jury shall be empanelled to try such fact or facts, and the Judge shall, in such case, postpone the further trial of said cause to such day. But nothing in this section shall operate to prevent any such cause being made a remanet, as other causes are.

Five jurors to  
try facts in Hal-  
fax.

56. Five jurors shall be empanelled and sworn for the trial of such facts, four or whom in case they cannot agree after two hours' absence, may render a verdict. Two challenges shall be allowed to the plaintiff and defendant each.

Jurors subject to  
penalties.

57. The jurors so returned or summoned shall be subject to the like pains and penalties that may be inflicted by a Judge of the Supreme Court.

Judge's powers  
to set aside find-  
ings of jury, &c.

58. Every Judge of the County Courts shall have power on application to set aside the finding of the jury on any fact or facts submitted to them when dissatisfied with such finding, and to order the fact or facts to be again tried by a jury, and to set aside all orders made by him at the trial, dismissing the cause, and to order judgment to be entered for either party or for arresting judgment, and to review and set aside his judgments and for new trials in all matters in like manner and on like grounds as the Judges of the Supreme Court or the Supreme Court. Such applications shall be by notice of motion, and no rule nisi or other proceeding than notice of motion shall be made or taken. The notice shall state the grounds of the application, and whether the whole or part only of the above subject-matters are complained of. The notice of the motion shall be served within ten days after the occurring of the matters complained of, but the Judge either before or after the expiration of that period may enlarge the time for giving notice. The notice may be amended at any time by the Judge on such terms as he shall think just. Such notice may be made returnable either at chambers or to the Court at its sittings as the Judge shall direct.

The Judge may  
order re-trial by  
jury.

59. The Judge shall have power to order any cause tried before him to be re-tried by a jury at any time previous to his having delivered judgment therein.

Judge's powers  
to amend de-  
fects.

60. The County Court and every Judge thereof shall at all times have the same power of amending all defects and errors in civil causes within their jurisdiction as is

now or from time to time may be by law vested in the Supreme Court and Judges. CHAP. 105.

61. The County Courts shall have and exercise the same power to enforce their rules and orders as the Supreme Court possesses. Rules and orders may be enforced.

CONTEMPT, &c.

62. If any person shall be guilty of any wilful contempt or resistance of the process, rules or orders of the County Court, or of any Judge thereof, or shall insult the Judge or any juror or witness, or any officer of the Court during his sitting or attendance in Court, or at the chambers, or be otherwise guilty of a contempt of court, or interrupt the proceedings or business of the Court either at sittings or at chambers, the sheriff, or any constable or other officer of the Court, shall by order of the Judge, take the offender into custody; and the Judge may impose on such offender a fine not exceeding fifty dollars for each offence, and in default of immediate payment thereof, the Judge may, by warrant under his hand and the seal of the Court, commit the offender to the county gaol of the county, for any period not exceeding one month for each fine imposed, unless such fine and costs, with the expenses attending such commitment, be sooner paid; or the said Judge may punish such offender by imprisonment without fine for a period not exceeding two months, or by fine or imprisonment in his option, and the warrant shall be in the form in the appendix hereto, or in any other form the Judge may direct; or the Judge may, where the exigency of the case requires it, order the party offending to be committed in the first instance without warrant, and direct the warrant to be subsequently handed to the sheriff or jailor. Contempt of Court, how punished.

PRACTICE, &c.

63. The practice, procedure and process of the Supreme Court for the time being, when not inconsistent with this Chapter, or any amendment thereof, as far as applicable to matters cognizable by the County Court, shall be the practice, procedure and process of the County Court. Practice of Supreme Court applicable.

64. In all statutes which are hereby made applicable to the County Courts or any matter relating thereto, the words, "Supreme Court" shall refer to, and include the County Courts of the Province; the word "Judge" shall refer to and include the respective Judges of the County Courts, in their respective districts; the word "verdict" shall include the judgment of the Judge trying the cause, when the cause is tried without a jury; the word "jury" Definitions of terms in statutes.



CHAP. 105. in said statutes, when not inconsistent, shall mean and refer to a Judge of the county Court, when the case is tried without a jury; and the word "Prothonotary" in said statutes, shall refer to and include the clerks or deputy clerks of County Courts, as the case may be.

Process and forms of Supreme Court applicable.

65. The process and forms of the Supreme Court from time to time shall be the process and forms of the County Court, the words "County Court for the district," and the word "clerk," or "deputy clerk," as the case may be, being substituted for the words "Supreme Court" and "Prothonotary," in said process and forms.

#### CASES STATED.

Cases may be stated and argued.

66. When the facts of a case now cognizable in the County Courts are not in issue, but questions of law are raised, it shall be competent for the parties, their counsel and attorneys, to submit to the Judge a case, setting out the facts as agreed upon, and containing the propositions of law on which they severally rely, and such case shall be argued before the Judge, either at Chambers or in term, as he shall direct, or a written argument may by the consent of the attorney and counsel of the respective parties be presented to him, and the decision of the Judge on such case shall be as binding and have the same effect as a judgment after trial; and judgment with costs to the successful party, unless the Judge shall otherwise order, may be entered up on decision; and either party may appeal to the Supreme Court from such decision in the same manner as in ordinary suits.

#### CHAMBERS RULES.

Judges may frame Chamber rules.

67. The Judges of the respective County Courts may, each for himself, frame such orders and regulations for regulating the order and practice before him at Chambers as may be most convenient; and may direct the clerks and deputy clerks of their respective Courts how and in what manner the several Chamber dockets and dockets for trials shall be made up.

#### ENTRIES OF CAUSES.

Causes for trial, when to be given in.

68. All causes for trial shall be given in to the clerk or deputy clerk, as the case may be, on or before the Tuesday preceding the first day of the sitting or term; and no cause not so given in shall be entered on the docket without the order of the Judge first had therein, and no cause not at issue before the said Tuesday shall be entered on the docket without the leave of the Judge; but said

Judge may, in his discretion, on special cause shown by affidavit, direct such cause to be placed at the foot of the docket, and notice of such entry shall be given to the attorney of the defendant or appellee, who may on affidavit and for special cause oppose the trial of the cause at that term or sitting. Appeal causes may be entered at any time before the Court opens without leave of the Judge. CHAP. 105.

## GENERAL RULES.

69. The Judges of the County Courts, or any four of them, may frame rules or orders not inconsistent with the provisions of this Chapter for regulating the general practice of the courts and the forms of procedure, and all rules and orders requisite for the better carrying out the objects of this Chapter, and improving the practice thereof; and may from time to time alter and amend such rules, orders and forms; and the same certified under the hands of such Judges shall be inserted in three issues of the *Royal Gazette*, and shall, from a day to be named by said Judges, be in force in every County Court; providing that any Judge dissenting from said rules and orders may submit the same to the Judges of the Supreme Court, together with his or their reasons for dissenting therefrom; and such Judges of the Supreme Court, or a majority of them, may allow, alter, or disallow any or all of the said forms, rules and orders; and the same, so allowed or altered, shall be inserted in three issues of the *Royal Gazette*, and shall, from a day to be named by the Judges of the Supreme Court, or a majority of them, be in force in every County Court of the Province; but no such rules or amendments thereof shall have any force or effect until they shall be approved by the Governor-in-Council, of which approval the publication in the *Royal Gazette* shall be *prima facie* evidence. Judges may  
frame general  
rules.

## CERTAIN CHAPTERS TO APPLY.

70. The following Chapters of the Revised Statutes, fifth series, namely, "Of Witnesses and Evidence," "Of the Relief of Indigent Debtors Confined in Jail," "Of Suits against Executors, Administrators and Trustees," "Of the Limitation of Actions," "Of the Sale of Lands under Execution," "Of Forcible Entry and Detainer," "Of Arbitration," and all Acts made and hereafter to be made in amendment thereof, as far as the same are applicable to matters within the jurisdiction of the County Court, and all Acts made or hereafter to be made in amendment thereof, and all other Acts, or parts of Acts, now in force, and hereafter to be in force in this Province, connected with the administration Certain chapters  
R. S. made ap-  
plicable.

CHAP. 105. of justice in the Supreme Court, and relating to matters within the jurisdiction of the County Courts, shall apply to the County Court, and the several County Courts; and the respective Judges thereof shall have and exercise all the powers and authority by the said Acts vested, or to be vested, in the Supreme Court, or the Judges thereof.

APPEALS TO COUNTY COURTS, AND SUMMARY SUITS.

Appeals to County Court, how entered.

71. All appeal causes shall be entered by the appellant on the docket of causes for trial at the ensuing term after the same shall have been appealed, provided the appeal has been perfected one week before the commencement of said Court; and if the causes when called are not tried, the appellee shall be at liberty to move the Court on the last day of said term, or at any previous time to be named by the Judge, that the judgment below be affirmed with costs, which order the Judge shall make unless the appellant shall make application for a continuance supported by satisfactory affidavits accounting for his not having tried the same when called as aforesaid, and disclosing a good cause of action or defence upon the merits.

If not entered, original judgment affirmed.

72. In case the appellant shall neglect to enter his cause, the original judgment shall on the last day of the term, or at any other time named by the Judge, be affirmed at the instance of the opposite party, with costs, unless the Judge shall, on good cause shown by affidavit for the non-entry, and disclosing a good defence or cause of action on the merits, otherwise order.

Respondent's remedy.

73. In appeal causes the respondent may take out execution against the appellant, or have recourse to the appeal bond.

Trial *de novo*.

74. All causes brought up by appeal and contested shall be tried anew.

Motion to grant appeal, when made.

75. All motions to set aside or quash the appeal for irregularity appearing in the papers sent up, shall be made the first day of the term or chamber sittings, or at such other time as the Judge shall order, and shall be heard and determined before the cause is tried; and no appeal shall be quashed by reason of the appeal bond being for a larger sum than may be by law required; provided that the Judge shall have power, upon being satisfied by affidavit that any defect in the papers or appeal occurred through mere inadvertence and without fault of the appellant, and without any intention to evade the requirements of the statute, to allow the appellant to amend and perfect his appeal, on such terms as to costs and time of trial as to him shall seem just.

76. The justice shall send to the County Court all the papers in the cause appealed, together with the appeal bond, and a transcript of his judgment, and the costs below to which each party would have been respectively entitled in the event of his having succeeded below, so far as the same can be ascertained.

CHAP. 105.

Justice to trans-  
mit appeal pa-  
pers.

77. The papers in all cases and convictions appealed to the County Court, shall be sent by the justice or justices before whom the same was tried to the clerk of the County Court not later than one week after the appeal shall have been perfected; but the Judge may extend the time on cause shown.

Papers, when to  
be sent up.

78. An order may be moved for and granted on any Chamber day or in term after the expiry of the time mentioned in the last preceding section, directing the justice or justices to return to the County Court forthwith the appeal papers, or show cause why he has, or they have, neglected so to do, and the costs of the application shall be paid by the justice or justices, unless the Judge shall otherwise order, and execution shall issue for the same when taxed, to be levied on the personal property of the justice or justices.

Motion for re-  
turn of appeal  
papers.

79. The justice or justices shall be entitled to recover their costs against the party applying for the order hereinbefore mentioned, provided he or they make it appear to the Judge granting such order that the papers were not sent up or not received within the period specified, through no default of his or theirs, and execution may issue for such costs when taxed.

Costs may be re-  
covered by jus-  
tice in certain  
cases.

80. In appeal causes, where the judgment below is affirmed, the final judgment shall include the debt and costs below, with the further costs of the County Court, and execution shall issue for such debt and costs, or for costs only, as the case may require. When the original judgment is reversed, increased, or diminished, the final judgment shall include the costs below, together with the amount for which judgment shall be given in the County Court, with the further costs, and execution shall issue for the same or for costs only, as the case may require; and when the original judgment shall have been reversed, increased, or diminished after the same shall have been enforced, the final judgment shall include the amount levied under the original judgment, together with the costs of such reversal.

Costs in appeal  
causes regulated

81. All actions for the recovery of debts under eighty dollars, shall be marked summary, as heretofore, and the claim shall be for a sum under eighty dollars. All distinctions between summary and sub-summary causes are hereby abolished.

Summary causes  
must be so mark-  
ed.

CHAP. 105.

## COSTS, ETC.

Costs to be as in appendix.

82. The costs and fees for services performed in suits for debts under eighty dollars, shall be as in the appendix hereto.

Execution to issue for costs.

83. In all cases where costs in any County Court are ordered by the Judge to be paid on any hearing or proceeding had before him at chambers, it shall be lawful for such Judge upon application therefor by the party entitled thereto, to grant a rule for a writ of execution, to issue out of any Court within his district, for the recovery thereof, which shall be executed by the Sheriff of any county in this Province, and such application shall not be necessary when any rule or order of the Court or the Judge is made with costs.

Sheriff's fees same as in Supreme Court.

84. The Sheriff shall be allowed for all services performed under this Chapter the same fees as are now provided for the like services in the Supreme Court, except when other fees are herein provided for.

Costs taxed by Judge.

85. The costs of all contested suits shall be taxed by the Judge.

Fees of clerk regulated.

86. The clerk's and deputy clerk's fees for all services performed under this Chapter shall be for declaration suits the same as for like services in the Supreme Court, and for all summary causes the fees mentioned in the appendix hereto.

Chamber fees for clerk regulated.

87. The fees of the clerk and deputy clerk for chamber entries, and for entries on the docket, and all other entries, shall be in all causes the sum mentioned in the appendix hereto; and the clerk or deputy clerk, as the case may be, shall enter the items in the costs presented to the Judge to be taxed. Where a jury is ordered each jurymen shall be entitled to receive a dollar for each day he shall attend, such sum to be paid by the County Treasurer out of any county funds in his custody or under his control, on the order of the Judge.

Jurors' fees.

Table of fees in Supreme Court.

88. The table of fees shall be the same as those in the Supreme Court for the like services, with the exception of cases in which a different scale of costs is authorized by this Chapter.

## ORDER FOR ARREST (CAPIAS.)

Arrest of defendant before final judgment.

89. The County Court or any Judge thereof shall have and exercise all the powers and authority conferred on the Supreme Court by Order XLIV. of "The Rules of the Supreme Court, 1884." as contained in Chapter 104 of the Revised Statutes, fifth series, in respect of the arrest of the defendant in a suit before final judgment, in all

causes of actions cognizable by the County Court where the affidavit shows a cause of action within the jurisdiction of the County Court as to amount; and the Sheriff and all other officers of the County Court shall be empowered and be liable to exercise and perform all the duties and offices conferred and imposed upon such officers in the Supreme Court by the said Order. CHAP. 105.

90. All further proceedings where a party has been arrested under process issued out of a County Court, including rendering defendants in discharge of bail, shall be according to the practice of the Supreme Court; and the Sheriff shall be charged with the custody of such defendants, in the same manner as he is charged according to the practice of the Supreme Court in relation to process thereon. Render of de-  
fendant.

#### APPEALS FROM COUNTY COURTS.

91. An appeal from every judgment, rule, order, or decision of a Judge of the County Court, made during the trial of a cause, in Court or at Chambers, except orders made in the exercise of such discretion as by law belongs to him, and also from his charge to the jury, and their verdict or findings, shall be to the Supreme Court sitting *in banco*. The appeal shall be by notice of motion, drawn up by the appellant, which shall state in specific terms the matters appealed from, and whether the whole or part only of such matter is complained of, and in the latter case shall specify such part. The motion for appeal shall be *ex parte*, and the notice shall be signed by the Judge. The motion for appeal shall be made within ten days from the time when the judgment, rule, order, decision or matter appealed from was pronounced or made, or when the appellant or his solicitor first had notice thereof; but the Judge may enlarge and extend the time for making such motion, either before or after the expiration thereof. The notice of appeal shall be served on the appellee and all parties directly affected by the appeal within forty-eight hours after the same shall have been signed by the Judge, or such extended time as he in his discretion shall allow. Appeals, how re-  
gulated.

92. After the Judge has signed the notice of appeal, he shall certify under his hand the pleadings in the cause, and all motions, or rules, or orders made, granted, or refused therein, and his ruling with regard to the acceptance or rejection of evidence tendered, and his charge, together with the evidence. The papers shall be prepared by the clerk of the Court under the direction of the

CHAP. 105. Judge, and shall be printed by the appellant or party who has the carriage of the proceedings. Affidavits shall be printed by the party desiring to use them.

Appellant's duty as to papers. 93. It shall be the duty of the appellant to see that all the papers and documents under his control necessary to the hearing of the appeal be filed in the County Court, in the county where the cause was tried, or the rule, order, or decision given, and the clerk shall immediately cause them to be filed in the Supreme Court at Halifax. The Supreme Court may amend the order for appeal, or certificate of appeal, in any particulars which the justice of the case may require, or may return the appeal papers to the Judge from whom such appeal is made for amendment, and such Judge shall have power in such case to make any such amendment and to re-transmit the papers to the Supreme Court.

Appeal when stay of proceedings. 94. No appeal shall operate as a stay of proceedings except under the provisions of Rule 8, Order XXXVII., of "The Rules of the Supreme Court, 1884."

Extent of appeal. 95. The appeal hereinbefore provided for shall extend to all causes which have been brought to the County Court by way of appeal, or by *certiorari*, provided the amount actually in dispute be above forty dollars, and also to orders for removal of paupers brought into the County Court by appeal.

Appeal may be granted on terms. 96. The Judge may grant an appeal on such terms as to security or otherwise, as he shall see fit upon any matter tried or argued before him, although the amount in dispute may be less than forty dollars; and in such case the matter shall be distinctly stated by him for the opinion of the Court of Appeal; and the appeal shall be conducted on the same principles as herein contained.

Sheriff's fees in certain cases. 97. When writs are issued in the county in which the sheriff resides, he shall only be paid travelling fees on service of writs from the place of their issue.

Deputy, same power as clerk. 98. Any act or thing which the clerk of the County Court is empowered to do, may be done by his deputy.

Chapter, how cited. 99. This Chapter may be known and cited as the "County Court Consolidation Act."

## APPENDIX.

CHAP. 105.

## SCHEDULE A.

A. B., of ———, having made the affidavit required by law, I therefore require you to appear before me on the ——— day of ———, next (or instant), at ———, to show cause, if any you have, why you should not deliver up to the said A. B. the premises described in said affidavit.

Dated this ——— day of ———, A. D. 18—.

E. F., J. C. C.

## SCHEDULE B.

To the Sheriff of ——— :

Whereas A. B. claims the premises situate (*here describe the premises*) now in the possession of C. D., who holds over and refuses to deliver up the same, the matter having been heard before me, pursuant to law, I do adjudge that the said A. B. shall be forthwith put in possession, and shall recover his costs, being ———, besides your fees for executing this writ; you are hereby commanded to put the said A. B. into immediate possession of said premises, and to levy off the goods and chattels of the said C. D. the sum of ——— for his costs, besides your fees, and for want of goods and chattels to take the said C. D. and deliver him to the keeper of the gaol of said County, who will safely keep him for ——— days, unless said costs and fees be sooner paid; and make return hereof and what you have done within ——— days from this date.

Dated this ——— day of ———, A. D. 18—.

E. F., J. C. C.

## SCHEDULE C.

## WARRANT OF COMMITMENT FOR CONTEMPT.

In the County Court for the County of ——— :

To ———, Sheriff of the Court, and to all constables and peace officers of the County of ———, and to the gaoler of the common gaol of the said County of ——— :

Whereas at the term (Chamber sittings for trial, or Chambers, *as the case may be*) of this Court, holden at ——— on the ——— day of ———, 18—, it was adjudged that E. F. did then and there wilfully insult me, A. B.,



CHAP. 105. Judge of said Court, or did in view of me, the said Judge, wilfully insult *C. D.*, clerk (*or* deputy clerk) of said Court, during his attendance on said Court, (*or* did unlawfully interrupt the proceedings of the said Court) and it was ordered that the said *E. F.* should forthwith pay a fine of \_\_\_\_\_ for such offence, and in default of payment be committed to the common gaol of the County of \_\_\_\_\_, for \_\_\_\_\_ days; and whereas the said *E. F.* did not pay the said fine, in obedience to the said order, these are therefore to require you, the said sheriff and others, to take the said *E. F.*, if he shall be found within the county, and deliver him to the gaoler of the common gaol of the county, and you the said gaoler are hereby required to receive the said *E. F.*, and him safely keep in the said common gaol aforesaid for the term of \_\_\_\_\_ days from the arrest under this warrant, unless the said fine and costs, the costs amounting to \_\_\_\_\_, and also the expenses attending the commitment, amounting together to \_\_\_\_\_, be sooner paid.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

A. B., Judge.

Sealed with the Seal of the Court.

(Sgd.)

\_\_\_\_\_,  
(Clerk or Deputy Clerk.)

costs.

In action *ex contractu* when the amount claimed is under eighty dollars, and appeal cases:—

Clerk or Deputy Clerk's fees, for filing copy, and sealing writs of summons . . . . .	\$ 50
Sealing order for arrest, taking affidavits, administering oath . . . . .	1 00
For any alias writ, and order for arrest . . . . .	50
Sealing every subpœna, including filing præcipe . .	20
Signing and sealing any dockets . . . . .	10
Entering judgment . . . . .	50
Sealing, and filing when returned any execution, and filing præcipe . . . . .	25
Copy of docket and certificate of judgment . . . . .	30
Entry on the Court docket . . . . .	10
Entry of any cause on Chamber docket when made .	10
Receiving, entering, filing and auditing every appeal suit . . . . .	25

Commissioners, appraisers, sheriffs, witness, crier, constable, coroner, fees same as in the Supreme Court.

## SOLICITOR'S FEES.

CHAP. 106.

In all causes *ex contractu* where the amount claimed is under eighty dollars, and appeal causes.

Writ of summons and copy and statement of claim	\$3 00
For affidavit and order to arrest.....	75
Any alias writ of summons, and order to arrest.....	40
Entering appearance and filing and serving defence	75
On final judgment.....	2 50
Every subpœna.....	30
Every copy.....	40
Præcipe for ditto, not to exceed one.....	20
Execution.....	80

Brief and copy not less than \$1.00 nor more than \$3.00 in discretion of Judge or clerk.

Counsel fee when cause tried not to exceed \$7.50, to be taxed by and in the discretion of the Judge or clerk.

The Judges of the County Courts shall, unless otherwise provided for, in summary and appeal causes, tax all costs for necessary work done in such causes as allowed in declaration causes.

In all other causes in the County Court the brief and counsel fee shall be regulated in the same way as in causes in the Supreme Court.

## CHAPTER 106.

## OF JURIES.

1. Every person not hereinafter exempted or who may not otherwise by law be exempted, who shall have resided twelve months within the County of Halifax, and shall be possessed of personal estate of the value of four thousand dollars, or shall be the owner or occupier of real estate, if within the city of Halifax, of the value of three thousand dollars, if in the County of Halifax, but without the limits of said city, of the value of two thousand dollars, shall be qualified to serve as a grand juror for the said County of Halifax.

2. Except as to the County of Halifax, every person not exempted from serving on juries who shall have resided for twelve months within any county, and shall hold a freehold estate of the value of five hundred dollars, or shall be assessed for county rates in respect of real or personal property or both, of the value of six hundred dollars or

CHAP. 106. upwards, in the county, shall be qualified to serve as a grand juror for such county.

**Disqualifications** 3. No person shall be placed on the list of grand jurors who shall have been convicted of crime, or whose character is notoriously bad, or who shall keep a disreputable house.

**Qualification of petit jurors.** 4. All persons not hereinafter exempted, or who may not otherwise by law be exempted, whether liable to serve as grand jurors or not, who shall have resided twelve months within the county, and shall, if in the County of Halifax, own property within the county to the value of eight hundred dollars or upwards, or if in any other county be assessed for real or personal property or both, of the value of five hundred dollars or upwards, shall be qualified to serve as petit jurors for such county, provided that no person residing more than fifteen miles from the city of Halifax shall be placed on any jury list for the County of Halifax.

**Persons exempted from serving on juries.** 5. The members of the Executive and Legislative Councils and of the House of Assembly, and the officers thereof while in session, the clerks employed in the offices of the Provincial Secretary, Attorney-General and Commissioner of Public Works and Mines, the Superintendent of Education and the clerk in his office, resident officers and employes of the Nova Scotia Hospital for the Insane, while actually engaged as such, Registrars of Deeds, officers of Her Majesty's courts, justices of the peace, the mayor and aldermen of the city of Halifax, the wardens or mayor and town councillors of every incorporated town, the officers composing the staff of the army, the clerks belonging to the several departments of the army, the officers and clerks belonging to and laborers employed in the naval yard, naval hospital establishment, the victualling establishment, and Her Majesty's ordnance, or the departments of the customs, and excise, and post office, and provincial railroad, ministers, attorneys, physicians, surgeons, keepers of light-houses, licensed ferrymen, teachers of academies, licensed schoolmasters, mail couriers, engine men and firemen, sworn electric telegraph operators, persons under twenty-one and above sixty years of age, and the cashiers or accountants and tellers actually employed in the several banks, shall be exempted from serving on juries; and no person shall be liable to serve on grand or petit juries more than once in three years respectively, unless in cases where a new summons shall be issued for jurors to supply the place of jurors not attending as hereinafter directed.

6. Every grand juror shall be entitled to receive the sum of one dollar for each day of his attendance at the Supreme Court, and travelling fees at the rate of ten cents for each mile of distance from the residence of such juror to the place where the said court is held. CHAP. 106.  
Fees of grand juror.

7. At the close of the court each grand juror shall state under oath to the prothonotary the amount due him for fees under this Chapter, and thereupon the prothonotary shall draw an order on the municipal treasurer in favor of such juror for such fees, and the municipal treasurer shall on presentment of such order pay the amount named therein to the juror or his order. How and by whom paid.

8. The amount of such fees shall be a municipal charge, to be added to the general assessment of the municipality. Grand jurors' fees to be a municipal charge.

9. The council shall once in every alternate year from among their number appoint a committee of not less than three members, resident in different sections of the municipality, for the purpose of preparing and revising the grand and petit jury lists of the municipality, and shall from time to time appoint others to act in the room of such as may die or be removed. Committee to revise jury lists.

10. The committee, having been sworn, shall have free access to all public papers and accounts, and shall prepare and revise the lists, and shall transmit copies thereof to the prothonotary. Duty of revising committee.

11. The municipal council for the County of Halifax shall, in addition to the committee to prepare lists of grand and petit jurors, appoint biennially a committee to prepare and revise a list of not less than two hundred special jurors, well qualified to act as special jurors in the Supreme Court at Halifax; and the names of such jurors shall be placed in a separate box in the usual manner, and all special juries ordered by the court shall be drawn therefrom. List of special jurors in Halifax County

12. No person residing more than fifteen miles from the city of Halifax shall be placed on any jury list for the County of Halifax. Persons exempted from jury lists in the County of Halifax.

13. Except as hereinafter otherwise provided, every municipality where a county is divided into municipalities, shall continue to be divided into eight sections arranged by the council; such sections to contain as nearly as possible an equal amount of population; and the committee appointed by such council shall return separate lists of the persons qualified to serve as grand jurors. Municipalities to be divided into sections.

14. The lists shall be valid if a majority of the committee appointed shall act in the compilation thereof. Lists valid if majority of committee act.

## CHAP. 106.

Lists of grand jurors to contain names, additions, &c.

15. The list of grand jurors shall contain all the Christian names, or one or more of the initials thereof, and the surnames, of all those qualified to serve as grand jurors, their places of residence, trades, callings, or employments, and whether senior or junior, or any other appellation by which they may be usually called or known.

Lists of petit jurors to contain like particulars.

16. The list of petit jurors shall contain all the Christian names, or one or more of the initials thereof, and the surnames, of all those qualified to serve either as grand or petit jurors, their places of residence, trades, callings, or employments, and whether senior or junior, or any other appellation by which they may be usually called or known.

Copies of jury lists to be posted; notice to be given thereon; errors or omissions therein.

17. When the list of jurors shall have been completed by the committee, a copy alphabetically arranged shall be given by them to the clerk of the municipality, and another copy to the prothonotary, who shall forthwith thereafter post up a copy of such list in their offices respectively, and keep the same posted up for at least one month; and such committee, or a majority thereof, shall meet in the county or district court house within two months from the last day of the sitting of council at which they were appointed, to revise such lists—a notice of the time of holding such meeting to be given on such lists so posted up—and shall hear and decide upon objections to the correctness of such lists, either as to names appearing thereon, or as to names omitted therefrom.

Corrected list furnished to prothonotary; effect of omissions.

18. The committee shall thereupon forthwith furnish the prothonotary with a copy of such lists so corrected and signed by them, and the lists shall be held valid, notwithstanding the omission of persons qualified, or the insertion of the names of persons not qualified, as grand or petit jurors, respectively.

Lists of names to be struck off or added.

19. The committee in hereafter revising the jury lists shall make a list of the names of those who, by reason of death or exemption, are to be struck out of the jury lists heretofore returned, and also a list of the names to be added to such lists; and the same upon being duly returned shall be struck out and added accordingly; and the same shall be considered a full revising of such jury lists; but a judge of the Supreme Court may, at any time it shall be deemed advisable, direct the revising committee to make out and return full and fresh lists of jurors.

Lists to be posted in prothonotary's office; names drawn to be marked.

20. The list of jurors shall be kept posted up in the prothonotary's office; and, when the juries are drawn to serve for each year, the prothonotary shall mark opposite to the name of each person the year he was drawn to serve, and whether as a grand or petit juror.

21. The council shall vote annually a compensation of one dollar and fifty cents to each of the committee who revise the lists as aforesaid, with travelling fees at the rate of five cents per mile coming and returning; and ten cents per folio per copies of the lists furnished by them.

CHAP. 106.

Remuneration to committee revising lists.

22. Any councillor appointed to revise such lists who shall knowingly put any person thereon who is not qualified, or omit any person who is qualified, or who shall wilfully neglect his duty in any other respect, shall be liable to a penalty of not less than forty nor more than two hundred dollars.

Penalty for wilfully making a wrong list.

23. In any municipality where grand or petit jurors have not been drawn for the current year, a special meeting of council may appoint a committee to revise the lists of jurors, and after the same are revised in manner directed by this Chapter, and returned by the committee to the prothonotary, he, together with the sheriff or his deputy, shall forthwith draw a jury or juries, as may be required, and the prothonotary shall issue *venires* for summoning the same; and such lists need not be drawn in open court, or signed by a judge of the Supreme Court.

When jurors not drawn for current year.

24. Revised lists of grand and petit jurors, hereafter to be prepared, shall be in the form of the schedule hereto annexed.

Form of lists.

25. The designations of jurors shall hereafter be written upon the tickets containing their names, and also upon the several panels and *venires*, in the same way as they are upon the revised lists.

Designation of jurors written on tickets.

26. The committee to revise the lists shall be chosen biennially, but shall continue in office until their successors are appointed.

Revising committee chosen biennially.

27. The prothonotary, associated with two justices appointed by the municipal council, as soon as possible after the return of such lists, shall have the names of all persons mentioned therein written on distinct and separate pieces of paper, so folded as to conceal the names thereon, and shall place the same in separate boxes; those names placed on the grand jury list being put into the grand jury box, and those on the petit jury list into the petit jury box; and the prothonotary, associated with two justices appointed by the municipal council, shall place the names of the grand jurors in the grand jury box in eight compartments, each compartment to contain the names of the jurors for one of the sections mentioned in section 13 of this Chapter.

Compartments, &amp;c.

28. In case the council should neglect to appoint the two justices to be associated with the prothonotary, as set out in the next preceding section, the warden of the municipality may appoint them; and in case any justice so appointed

Justices may be appointed by warden, when council omits to do so.

CHAP. 106. shall die, leave the county, or refuse, or be unable to perform the duties devolving on him under said section, the warden shall appoint a justice to act in his place and stead.

Grand jury, how drawn and summoned.

29. During the sitting of the court on the last term in each year, the prothonotary, associated with two justices appointed by the judge, shall draw from the grand jury box in open court, and before drawing the petit jury, the names of the number of grand jurors that may require to be drawn under the present law to make up the number of twenty-four for the ensuing year; such names to be drawn from each of the eight compartments in turn. Eight of the grand jurors so drawn shall always continue in office for two years, and shall consist of those whose names shall be first drawn from the grand jury box in each year. The prothonotary, at the close of the drawing, shall make a list of the names of such grand jurors as shall be serving for a second year, together with such names as shall first be drawn, setting aside the names of those who have served within two years then next preceding, which list shall be signed by the presiding judge; and the prothonotary shall issue writs of *venire facias* for the summoning of such jurors, and shall deliver the same to the sheriff at least twenty days before the first term or sittings of the Supreme Court, at which such grand jury shall be bound to attend; and the sheriff shall thereupon cause such jurors to be summoned at least four days before the time appointed for their attendance. Provided that in any county where the same person holds the offices of prothonotary and clerk of the municipality the names of grand (and petit) jurors shall be drawn from the box by the sheriff or his deputy, associated with two justices as aforesaid.

Foreman of grand jury, how chosen.

30. When above twelve of the grand jury shall assemble in court for the first time in each term, they shall choose a foreman, who shall be foreman of such jury for the term; and such foreman and jury shall be sworn in the usual manner.

Petit jurors, how drawn and summoned.

31. At each term of the Supreme Court the prothonotary, or (in case the same person is both clerk of the municipality and prothonotary) the sheriff or deputy sheriff, associated with two justices appointed by the judge, shall, in open court, draw from the petit jury box a number of names to form the panel of petit jurors for the ensuing term; and, setting aside the names of all those who shall have served either as grand or petit jurors within two years then next preceding, or who shall then be serving or drawn as grand jurors, shall prepare a list

containing the names of those first drawn, and have the same signed by the presiding judge, and shall issue writs of *venire facias* for the summoning thereof, and deliver the same to the sheriff at least twenty days before the ensuing term; and the sheriff shall cause such jurors to be summoned at least four days before the time appointed for their attendance. CHAP. 106.

32. The associated justices may, in their discretion, before proceeding to draw any jury, require the prothonotary in their presence to examine and compare the slips in the jury boxes with the list in his possession. Associate justices, duty of.

33. In case of the illness or absence of the judge, or if owing to omission or mistake, or from any other cause whatever, it should happen that a grand or petit jury should not be drawn and lists be signed, as provided in sections 29 and 31, then and in such case it shall be lawful for the prothonotary, associated with two justices appointed by the warden, at any time within two weeks next after the time fixed by law for the opening of the term or sitting, to draw such grand or petit jury, and the warden shall then sign the lists; and the same shall thereupon be as valid in all respects as if such lists had been drawn in open court and signed by a judge; and the prothonotary shall issue the usual writs of *venire* requiring the sheriff to summon such jurors so drawn: Provided that, if the prothonotary be disqualified as mentioned in such sections, the names of the jurors shall be drawn by the sheriff or his deputy. Provisions for drawing jury in certain cases.

34. No grand jury shall be composed of less than thirteen members. Minimum number of grand jury.

35. In any civil cause, information, or indictment for a misdemeanor, the court, upon motion, may order a special jury for the trial thereof upon sufficient cause shown on affidavit; and the court may order a special jury for the assessment of damages upon similar motion in cases where the assessment is to be made before them, and the judge may, at the final taxation of costs, order which party shall pay the cost of such special juries, including the costs of travel of such jurors. Special court may order special jury, upon motion.

36. When special juries are ordered the prothonotary shall draw thirty-six names from the petit jury box in civil cases, and forty-eight in cases of information or indictment for misdemeanor, setting aside the names of any persons then serving as grand jurors; and the number having been reduced to eighteen in civil cases, and to twenty-four in cases of information or indictment, in the usual manner, they shall be summoned at least forty-eight hours before the time appointed for their attendance: Provided that Special juries, how drawn.



CHAP. 106. nothing in this section shall be construed to conflict with the provisions of section 11 as to the County of Halifax.

Petit juries,  
panels of.

37. There shall be returned a panel of twenty-four petit jurors to each short term in the county, and two panels of twenty-four petit jurors each, to each extended term in those counties where the term can be so extended.

Petit juries for  
sittings at Hal-  
fax,

38. All panels of petit jurors for the trial of civil and criminal causes at Halifax, in the Supreme Court, shall be drawn by the prothonotary, associated with two justices appointed by a judge of the Supreme Court, in the manner provided in section 31 of this Chapter, and the same course shall be pursued in preparing and signing lists thereof, and issuing and delivering writs of *venire facias* therefor, and in summoning such jurors, as is directed in said section.

Extra panel of  
jurors for Hal-  
fax.

39. The judges shall have power to direct that an extra panel of petit jurors shall be drawn at any sittings in Halifax before a judge in open court, in the manner hereinbefore appointed, who shall be summoned for and bound to attend at such time and for such period as shall be prescribed in the order therefor, and who shall be subject to the same fines for non-attendance, and be entitled to the like immunities and to the same fees and compensation, as are provided in respect of other petit jurors; and such extra jurors shall be competent to try both civil and criminal causes under the direction of the judges.

What counties to  
have each two  
panels at their  
long terms re-  
spectively.

40. There shall be two panels of jurors drawn and summoned for those counties in which the term extends beyond one week, except the counties of Antigonish and Queens; the first of which panels shall be summoned for and bound to attend on the first day of the term and thence until the succeeding Monday, and the other shall be summoned for and bound to attend on the first Monday of such term, and thence until the termination of the sittings, except in the county of Pictou, where the first panel shall be summoned for and bound to attend on the first day of the term and thence until the succeeding Thursday, for which day the second panel shall be summoned and bound to attend thence until the termination of the sittings.

Jury empanelled  
when not to be  
discharged.

41. A jury empanelled for the trial of a cause which shall go over the time specified for the attendance of such jury, shall not on that account be discharged.

Panel to be called  
on first day;  
absent jurors  
fined.

42. The whole panel of jurors shall be called on the first day on which they are bound to attend, and before any cause to be tried by a jury shall be proceeded in; and all jurors not then in attendance shall be fined.

Second panel,  
when not called,  
returned as if  
not drawn.

43. When the second panel shall not have been called upon to serve as a jury, their names shall be returned into the boxes, as if not drawn.

44. If a sufficient number of grand or petit jurors do not attend, or if it is probable that a sufficient number may not attend, the names of those who do not attend shall be returned to the box as if they had not been drawn, and the prothonotary shall draw the names of others liable to serve, and shall cause the sheriff immediately to summon those whose names have been so drawn to attend forthwith.

CHAP. 106.

Names of jurors not attending be returned to box, and others summoned forthwith.

45. All fines for non-attendance of jurors shall be levied by warrant of distress; such warrant shall be made out and delivered by the prothonotary to the sheriff immediately after the calling of the jury each day, or at such other time as the court may order; and the sheriff shall proceed at once to enforce the same, and shall forthwith return to the prothonotary a statement of all fines received by him, which statement shall also set forth the reasons why such fines, if any, have not been collected; and the sheriff shall at the same time pay over to the prothonotary the full amount by him received, deducting ten per cent., and the prothonotary shall immediately lay such statement before the court, if then sitting, or otherwise at the next term thereof in the county; and he shall also at the end of each term pay over the amount of fines collected, deducting five per cent., to the municipal treasurer, for municipal purposes, and shall take his receipt therefor, which shall be laid before the court at its next sitting.

Fines, how levied; how, when, and to whom payable.

46. Every petit or special jury for the trial of civil causes, inquisitions and issues, bastardy cases, appeals, and *certiorari*, shall consist of nine persons, of whom seven, after at least four hours' deliberation, may return a verdict; and the petit jury for criminal trials, except as hereinbefore stated, shall consist of twelve persons.

Number of jurors in civil cases.

47. The practice of keeping a jury without meat, drink, or any other comfort until they agree upon their verdict, is abolished.

Jurors not to be deprived of food, &c.

48. Each petit and special juror and talesman shall be entitled to receive and be paid the sum of one dollar per day, for his actual attendance as a juror at the Supreme Court, and also ten cents per mile for every mile he shall necessarily travel from his place of residence to the court house; such actual attendance and distance to be ascertained by the oath of the juror.

Pay of petit jurors.

49. The prothonotary in each county shall, on the last day of the sitting of the Supreme Court in each term, and of the sittings of such court in Halifax, and also at the end of the first week of the sittings in those counties where the sittings can be extended, prepare and certify a list of the jurors who actually attended such Court, with the number of days' attendance, and the actual travel of

List of jurors to be prepared, with their attendance and travel, to be paid out of county funds.

CHAP. 106. each juror respectively, and the amount to which each juror is entitled, and shall deliver such list to the presiding judge, who shall certify the same; and the treasurer shall forthwith thereupon pay out of the municipal funds to each juror the amount which such juror appears entitled to receive upon such list.

Fund to be raised by fees.

50. To provide a fund towards the payment of jurors under this Chapter, the following fees shall be paid by plaintiffs to the prothonotary, and by him into the municipal treasury, viz.: On the issuing of writ of mesne process, except in summary suits, one dollar, and on the swearing of every jury, six dollars; the above fees to be taxed and allowed, and included in the costs in the cause, provided that this section shall not apply to the County of Halifax.

Accounts of receipts and payments.

51. The municipal treasurer shall keep an account of all receipts and payments under the two last sections, such account to be laid before the municipal council with his other accounts.

Jurors, how relieved from fines.

52. The court or presiding judge may relieve any juror from a fine, in whole or in part, on sufficient reason being shown on oath, which oath, if in writing, may be made before a justice of the peace.

Proceedings in case of illness of juror.

53. In case of the illness of a juror, after he shall have been sworn in any civil cause, it shall be in the discretion of the presiding judge to allow the cause to proceed without him; and the verdict shall be valid, provided seven of the remaining jurors shall concur therein.

Amendment of jury lists provided.

54. The court or presiding judge may amend the lists of jurors by striking out the names of persons not liable to serve, or inserting the true name or addition of any person therein improperly designated or described, or by adding the name of any qualified person brought to their knowledge; and the prothonotary shall keep a memorandum of all such amendments, and annually return the same to the clerk of the municipality, to be laid before the revising justices

Special jury, how drawn and called on trial.

55. The prothonotary shall cause the names of the special jurors to be written on distinct and similar pieces of paper, and having folded the same so as to conceal the names, and placed them in a box, shall proceed to draw the jury therefrom, and the nine or twelve, in civil or criminal cases respectively, whose names shall be first drawn, and who shall be in attendance, shall be the jury for the trial of the cause or assessment of damages.

Petit juries, how drawn and called on trial.

56. The prothonotary shall cause the names of the petit jurors to be written on distinct and similar pieces of paper, and having folded the same so as to conceal the names, and placed them in a box, shall, on the first cause

being called, proceed to draw the jury therefrom, and the nine or twelve in civil or criminal cases respectively, whose names shall be first drawn, and who shall be in attendance, and shall not be challenged, shall be the jury for the trial of the cause; and when another cause shall be called, the prothonotary, having returned into the box the names of those who have been challenged or who have not appeared, shall proceed to draw the jury therefrom until all the names have been drawn, when the names of such as have served on previous juries shall be returned to the box, to be drawn in like manner.

57. When a full jury shall not appear, or appearing shall be challenged, or otherwise prove deficient, a *tales de circumstantibus* may, at the instance of either party in civil causes, be awarded and returned immediately.

Tales may be prayed by either party.

58. In all civil causes either party may peremptorily challenge, if in Halifax four, if in any other county three, of the jurors or talesmen.

Challenges without cause allowed.

59. The councils of each municipality within every county where the Supreme Court sits only in the shire town and which is divided into municipalities shall, where such division has not already been made, at their first sitting proceed to divide each of such districts into four sections, instead of eight sections as hereinbefore provided, such four sections to contain as nearly as possible an equal amount of population.

Certain municipalities to be divided into four sections.

60. The committee appointed by the council shall return separate lists, alphabetically arranged, of the persons qualified to serve as grand jurors, one list to be returned to the prothonotary and one to the clerk of the municipality.

Committee to return separate list of persons for grand jurors.

61. The prothonotary shall place the names of the grand jurors for the whole county in the grand jury box, in eight compartments, each compartment to contain the names of the jurors for one of such sections, and shall draw the names of three grand jurors from each of such compartments in the usual manner.

Names of grand jurors to be placed in box with eight compartments.

62. The duties imposed by this Chapter on the prothonotary shall be performed by the clerk of the municipality where necessarily devolving on him.

Duties of Prothonotary performed by clerk of municipality in certain cases.

63. Hereafter the municipal treasurer shall pay no petit jury fees to applicants, unless there be first produced to him a written or printed statement verified by the oath of each claimant in the form in the schedule to this Chapter.

Payment of petit jury fees.

64. No juryman shall be entitled to any pay for any day on which he does not answer to the morning roll call, nor for any day on which he shall fail to answer when called for duty during the day; and the prothonotary shall

Juryman when not entitled to fees.



## CHAPTER 107.

## OF WITNESSES AND EVIDENCE.

1. Where a court or tribunal of competent jurisdiction in any part of Her Majesty's dominions, or in any foreign country shall, in some proceeding before it, issue or authorize a commission or order for obtaining the testimony of some person being within this Province or the production of papers therein, it shall be lawful for the Supreme Court or a judge, if satisfied of the authenticity of the commission or order, and the propriety of the examination or production, by rule or order to direct the examination of the persons whom it is desired to examine, and the production of papers, when required, in the manner prescribed in the commission or order for examination, or in such other manner, and before such person and with such notice, as the court or a judge may direct.

Supreme Court may order examination of witnesses under commissions from courts abroad.

2. All proclamations, treaties, and other acts of state of any foreign state, or of any British colony, and all judgments, decrees, orders, and other judicial proceedings of any court of justice in the United Kingdom of Great Britain and Ireland, or in any foreign state, or in any British colony; and all affidavits, pleadings, and other legal documents, filed or deposited in any such court, may be proved in any court of justice, or before any person having, by law, or by consent of parties, authority to hear, receive, and examine evidence, either by examined copies, or by copies authenticated as hereinafter mentioned, that is to say: if the document sought to be proved be a proclamation, treaty, or other act of state, the authenticated copy, to be admissible in evidence, must purport to be sealed with the seal of the foreign state or British colony to which the original document belongs; and if the document sought to be proved be a judgment, decree, order or other judicial proceeding of any British, foreign, or colonial court, or an affidavit, pleading, or other legal document, filed or deposited in any such court, the authenticated copy, to be admissible in evidence, must purport to be sealed either with the seal of the said British, foreign, or colonial court to which the original document belongs, or in the event of such court having no seal, to be signed by the judge, or if there be more than one judge, by any one of the judges of the said court, and such judge shall attach to his signature a statement in writing on the said copy, that the court whereof he is a judge has no seal; but if any of the aforesaid authenticated copies shall purport to be sealed or signed as hereinbefore respectively directed, the same shall

Proclamations, judgments, affidavits, &c., in what cases admitted in evidence, and how proved.

CHAP. 107. respectively be admitted in evidence in every case in which the original document could have been received in evidence, without any proof of the seal where a seal is necessary, or of the signature, or of the truth of the statement attached thereto, where such signature and statement are necessary, or of the judicial character of the person appearing to have made such signature and statement.

Documents admissible in evidence in England, &c., without proof of signature, &c., admissible here.

3. Every document which, by any law now in force or hereafter to be in force, is or shall be admissible in evidence of any particular in any court of justice in England, or Wales, or Ireland, without proof of the seal or stamp, or signature authenticating the same, or of the judicial or official character of the person appearing to have signed the same, shall be admitted in evidence to the same extent and for the same purposes, in any court of justice in this Province, or before any person having therein, by law or by consent of parties, authority to hear, receive and examine evidence, without proof of the seal, or stamp, or signature authenticating the same, or of the judicial or official character of the person appearing to have signed the same.

Certified copies of papers filed in court admissible as evidence.

4. Copies of any document, writing, or proceeding, filed in any court in this Province, shall be received as evidence to the same extent as the original; provided such copies be certified under the seal of the court, or by the proper officer under his hand.

Affidavits to hold to bail, &c., made abroad.

5. All affidavits for the purpose of holding persons to bail in this Province, or having relation to any judicial proceeding in any court of justice therein, purporting to be made before a commissioner appointed to do acts without the Province, or a judge of any court of justice in the United Kingdom, or in any foreign state, or in any British colony, if in other respects conformable to law and the practice of the court in which they are designed to be used, may, notwithstanding they are made before such commissioner or judge of a British, foreign, or colonial court, be received and acted upon, and shall have the same effect as if made before a judge or other lawful authority in this Province; provided the same purport to be sealed with the seal of such commissioner or of the British, foreign, or colonial court, before one of the judges of which they purport to be made, or in the event of such court having no seal, provided the judge whose name is subscribed thereto, shall have attached to his signature a statement in writing, on the affidavit, that the court whereof he is a judge, has no seal; but if any such affidavit shall purport to be sealed and signed, or to be signed, without being sealed, as hereinbefore respectively

directed, the same shall be respectively received and acted upon as aforesaid, and admitted in evidence in every court of this Province, without any proof of the signature and seal of the commissioner or of the signature of the judge and seal of the court, where a seal is necessary, or of the signature, or of the truth of the statement attached thereto, where such signature and statement are alone required, or of the judicial character of the person appearing to have made such signature, or signature and statement respectively. Declarations now or hereafter made in conformity with, and which shall have legal effect and operation in the place where the same may be made, under and by virtue of an Act of the imperial parliament, passed in the fifth and sixth years of the reign of his late Majesty King William the Fourth, chapter sixty-two, relating to the abolition of oaths in certain cases, and of any Act in amendment thereof, shall have the same operation and effect in this Province as if authenticated under oath before the same officers before whom the declaration had been made, and as if these officers had been authorized to administer such oath.

Declarations having legal effect where made to have the same effect here.

Acts, deeds, evidence, acknowledgments, and declarations, now or hereafter done, made, taken, or proved in Great Britain or Ireland, or any of Her Majesty's possessions, with those forms of authentication and proof which shall be the legal mode of proof and authentication in those places, shall have the same force and effect in this Province as if sworn to before the same persons or officers, by and before whom the proof and authentication may be made, and as if those persons or officers had power to administer an oath.

Acts, deeds, &c., having legal effect in Great Britain, &c., to have the same here.

6. Every register of, or declaration made in respect of, any British ship, in pursuance of any of the Acts relating to the registry of British ships, may be proved in any court of justice, or before any person having, by law or by consent of parties, authority to hear, receive and examine evidence, either by the production of the original, or by an examined copy thereof, or by a copy thereof purporting to be certified under the hand of the person having the charge of the original, and which person is hereby required to furnish such certified copy to any person applying at a reasonable time for the same, upon payment of the sum of twenty cents; and every register or copy of register, and also every certificate of registry granted under any of the Acts relating to the registry of British vessels, and purporting to be signed as required by law, shall be received in evidence in any court of justice, or before any person having, by law or by consent of parties, authority to hear,

Proof of register of British ship.



CHAP. 107. receive, and examine evidence, as presumptive proof of all the matters contained or recited in such register, when the register, or such copy thereof as aforesaid is produced, and of all the matters contained or recited in, or endorsed upon, such certificate of registry when such certificate is produced.

Certified copies  
of grants, &c.,  
admissible as  
evidence.

7. A copy of any grant of lands, or documents or any proceedings in Her Majesty's Council respecting the titles of lands, or filed in the Provincial Secretary's office, certified by the Provincial Secretary or the Clerk of the Council, shall be received as evidence to the same extent as the original; and copies of any document, writing, or proceeding, returned to or filed in the Provincial Secretary's office, and copies extracted from the Minutes Book, and entries of the Executive Council, duly certified by the Provincial Secretary, Deputy Secretary, or Clerk of Council, and copies of applications, transfers, and other original papers in the Mines Office, duly certified by the Commissioner of Mines and Works or his deputy, shall be receivable in evidence to the same extent as the originals.

Certified copies  
of deeds, &c.,  
may be received  
as evidence.

8. A copy of any grant from the Crown, or of any deed from the books of registry, certified under the hand of the registrar, or proved to be a true copy taken therefrom, shall be received as evidence in the absence of the original, if it shall be made to appear to the court, by affidavit, that such original is not in the possession or under the control of the party, and that he has inquired for, and been unable to procure the same.

Probate of will  
or certified copy  
received as evi-  
dence.

9. The probate of a will, or a copy thereof, certified under the hand of the judge or registrar of probate, or proved to be a true copy of the original will, when such will has been recorded, shall be received as evidence of the original will in all causes; but the court may, upon due cause shown upon affidavit, order the original will to be produced in evidence, or may direct such other proof of the original will as under the circumstances may appear necessary or reasonable for testing the authenticity of the alleged original will and its unaltered condition, and the fidelity of the prepared copy.

To apply to wills  
regularly proved  
abroad.

This section shall apply to wills and the probate and copies of wills proved elsewhere than in this Province; provided that the original wills shall have been deposited and the probate and copies granted in regularly constituted courts having jurisdiction over the proof of wills and administration of intestate estates or the custody of wills.

Notice to be  
given to oppo-  
site party.

10. A party intending to avail himself of the two preceding sections must give notice in writing of such his intention to the opposite party at least ten days previous

to the trial, with a schedule of the deeds or wills so intended to be given in evidence, and the books wherein the same are recorded; but the judge may dispense with such notice if he be satisfied that no injustice has been done by the want thereof. The certificate of registry endorsed on any deed, docket of judgment or attachment, and signed by the registrar, shall be taken and allowed in all courts as evidence of the registry.

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Certificate of registrar of deeds received as evidence of registry.

11. A copy of any duplicate original of a grant or of the registry of any grant, certified by the Commissioner of Crown Lands, or by the registrar of deeds of any county where such grant is recorded, shall be received in evidence.

Copy of grant.

12. A certificate of the Prothonotary at Halifax, on the plan of any township returned under the thirtieth section of Chapter eighty-four "Of the Registry of Deeds and Encumbrances affecting Lands," shall be presumptive evidence that the same is the original plan which it is alleged to be in such certificate; and such plan shall thereupon be received in evidence as such.

Plans certified by Prothonotary

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

Proof of instruments.

14. Comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine, shall be permitted to be made by witnesses, and such writing and the evidence of witnesses respecting the same, may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute.

Proof by comparison of handwriting.

15. No person shall be an incompetent witness by reason of incapacity from crime or from interest.

Witness not incompetent from crime or interest.

16. On the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, action, or other proceeding in any court of justice, or before any person having by law or by consent of parties authority to hear, receive and examine evidence, the parties thereto, and the person in whose behalf any such suit, action or other proceeding may be brought or defended, and the husbands and wives of the parties thereto, and the person in whose behalf any such suit, action, or other proceeding may be brought or instituted, or opposed or defended, including the reputed father in bastardy cases, and the defendant in cases of petty trespass and assault, shall, except as hereinafter excepted, be competent and compellable to give evidence, either *viva voce* or by deposition, according to the practice of the court, on behalf of either or any of the parties to the suit, action, or other proceeding.

Competent witnesses.

**CHAP. 107.** Provided that on the trial of any issue joined or of any matter or question, or on any inquiry arising in any suit, action, or other proceeding in any court of justice, or before any person having by law or by consent of parties, authority to hear, receive and examine evidence brought by or against the executor or administrator of a deceased person, it shall not be competent hereafter for any other of the parties to such action, or the wife of any such party to give evidence on behalf of such party of any dealings, transactions or agreements with the deceased, or of any statements or acknowledgments made or words spoken by him, or of any conversations with him; provided that any such party or his wife shall be competent and compellable to give evidence on behalf of any such executor or administrator.

Parties excluded from giving evidence, in suits by or against executors.

Proviso.

Incompetent witnesses.

17. Nothing herein contained shall render any person who, in any criminal proceeding, is charged with the commission of any indictable offence, or any offence punishable on summary conviction, other than those mentioned in the preceding section, competent or compellable to give evidence for or against himself, or shall render any person compellable to answer any question tending to criminate himself; and nothing herein contained shall render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband, in any criminal proceeding, or in any proceeding in consequence of adultery.

Communications of husband to wife, &c., not to be disclosed.

18. No husband shall be compellable to disclose any communication made to him by his wife during the marriage; and no wife shall be compellable to disclose any communication made to her by her husband during the marriage.

Not to apply to actions brought for adultery.

19. Nothing in the three next preceding sections shall apply to any action, suit, proceeding or bill, in any court of common law or court of marriage and divorce, instituted in consequence of adultery.

Party producing witness not to give evidence of his bad character, but may contradict him.

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

21. If a witness upon cross-examination as to a former statement made by him relative to the subject-matter of the cause, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

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Evidence of inconsistent statement of witness, when to be received.

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

Examination of witness as to previous statement in writing.

23. A witness in any cause may be questioned as to whether he has been convicted of any felony or misdemeanor; and upon being so questioned if he either deny the fact or refuse to answer, it shall be lawful for the opposite party to prove such conviction; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for such offence, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court where the offender was convicted, or by the deputy of such clerk or officer (for which certificate a fee of one dollar and no more shall be demanded and taken), shall, upon proof of the identity of the person, be sufficient evidence of the conviction, without proof of the signature or official character of the person appearing to have signed the same.

Examination of witness relative to his conviction of crime.

24. Where a witness in a cause resides more than five miles from the place where the trial is to be had, a justice of the peace may issue a subpoena for such person to attend at the trial thereof, and the same shall be in the usual form of a justice's subpoena, with the necessary alterations.

Subpœna issued by J. P. when witness resides over five miles distant.

25. No person shall be obliged to attend or give evidence, in any cause before any court, judge, commissioner, master, or arbitrator, or other person authorized to take his evidence before he is tendered his legal fees for such attendance and necessary travel.

Witness not obliged to attend until legal fees are tendered.

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Judge's testimony, how taken and used.

26. The testimony of a judge of the Supreme Court may be taken before any other judge or a commissioner in the same manner as in the case of a witness about to leave the Province; and the testimony may be used on the trial, though the judge be not out of the Province, if he shall be necessarily absent from the county on official business.

## Affirmations.

27. If any person called as a witness, or required or desiring to make an affidavit or deposition, shall refuse or be unwilling from alleged conscientious motives, to be sworn, it shall be lawful for the court or judge, or other presiding officer, or person qualified to take affidavits or depositions, upon being satisfied of the sincerity of such objections, to permit such person, instead of being sworn, to make his solemn affirmation or declaration, in the words following, videlicet :

"I, A. B., do solemnly, sincerely, and truly affirm and declare that the taking of any oath is, according to my religious belief, unlawful; and I do solemnly, sincerely, and truly affirm and declare," &c.

Which solemn affirmation and declaration shall be of the same force and effect as if such person had taken an oath in the usual form.

Parties empowered to administer oaths.

28. All courts, judges, justices, officers, commissioners, arbitrators, or other persons now or hereafter having, by law or by consent of parties, authority to hear, receive and examine evidence, are hereby empowered to administer oaths to all such witnesses as are legally called before them respectively, and to administer affirmations to such of them as are exempted from taking oaths, and shall attest their having administered such oaths or affirmations by their respective signatures.

Appointment of commissioners abroad; their oaths to be valid

29. The Governor-in-Council may select as commissioners persons residing in the United Kingdom, or in any British colony, or in a foreign country; and a certificate under the hand and seal of any such commissioner of the due acknowledgment as required by law, before him, of release of dower by married women in lands situate within this Province, or of the attestation under oath before such commissioner of the due execution of deeds and writings intended to be registered, or deposited, or filed, in any public office in this Province, or of the attestation to affidavits relating to the transfer and registry of vessels belonging to this Province, or relating to proceedings in the Supreme Court, or in any other court within this Province, being a court of record, shall be of full force and effect in this Province, when produced in evidence therein, to all intents and purposes, as if such acknowledgment, oath, or attestation had been duly taken, administered and certified, by and

before persons authorized to act in like cases within this Province. CHAP. 107.

30. Parties to a suit when entitled or compellable to be examined, shall be included under the term "witnesses," and be within the meaning and object of this Chapter. The term "commissioners" when used in this Chapter shall include commissioners appointed for taking affidavits, and also commissioners and any other persons specially authorized under this Chapter or The Judicature Act, 1884, to take examinations, depositions, affirmations or answers. Definition of terms.

31. In all cases of contempt by disobedience of any rule or order made under authority of this Chapter, any judge may take cognizance of such contempt, and issue attachment or other process of contempt, and decide thereon, subject to appeal to the court as in cases of appeal from a judge at chambers; and nothing herein shall abridge the jurisdiction of the court over such contempts. Contempt of orders, &c., how treated.

32. Depositions of witnesses taken before a judge, examiner or other officer, together with any books, papers or documents produced in connection with such depositions, shall be returned by the judge or examiner or other officer before whom the same are taken to the prothonotary of the county where the cause is to be tried, by whom they shall be filed; and the adverse party shall be entitled to use the same as evidence on the trial, provided he shall have appeared by himself or his attorney and cross-examined such witnesses. Depositions, &c. to be returned to prothonotary.

33. A copy of any map, plan, report, letter written or received, or other paper or document whatsoever received by or filed in any of the departments of the Government of the Dominion of Canada, purporting to be duly certified by the head of such department or his deputy as being a true copy of the original, or a copy of any proceeding of Her Majesty's Privy Council for the Dominion of Canada, purporting to be duly certified by the Clerk of such Council, shall be held to be authentic, and shall be received as evidence, and be *prima facie* of the same legal effect as the original in any court in Nova Scotia. Copy of map, paper, &c. from Dominion Government department, when certified, to be evidence.

34. In any action, suit or other proceeding at law or in equity, where a party desires to produce and prove a telegraphic message, it shall not be necessary to produce and prove the original message; but the party intending to establish in proof the contents of any such original message may give notice to the opposite party at least ten days before the trial or other proceeding in which such proof is intended to be adduced, that he intends, at such trial or proceeding, to give in evidence as proof of the contents of such original telegraphic message the message received by Mode of proving telegraphic messages.

CHAP. 108. him from the telegraph office, and the message so received by him shall be held to be authentic and shall be received in evidence, and be *prima facie* of the same legal effect as the original, in any court in this Province; provided the party so receiving the same proves that it was received at the telegraph office of the place to which it was addressed.

Certificate of  
Treasury Board  
under Banking  
Act, how proved.

35. Every certificate granted by the Treasury Board under the seventh section of Chapter 5 of the Statutes of Canada for the thirty-fourth year of Her Majesty's reign, 1871, entitled, "An Act relating to Banks and Banking," shall, on proof of the signature of the party thereto, be received as evidence of the contents of such certificate and that the same was granted by such Treasury Board.

Deeds executed  
out of the Prov-  
ince, how admit-  
ted in evidence.

36. Deeds executed out of the Province as well in foreign countries as in the British dominions shall be admitted in evidence on the trial of a cause in the Supreme or County Courts upon like proof of their due execution as is now required to entitle such deeds to registry within the Province.

Not to conflict  
with Dominion  
legislation.

37. Nothing herein shall be construed to contravene or conflict with any legislation (*intra vires*) of the Parliament of Canada.

## CHAPTER 108.

### OF BARRISTERS AND ATTORNEYS.

Precedence of  
certain members  
of the bar.

1. The following members of the bar in this Province shall have precedence in the courts of the Province in the following order:—

(1.) The Attorney-General for the time being of the Dominion of Canada.

(2.) The Attorney-General for the time being of the Province.

(3.) The members of the bar who were before the first day of July in the year one thousand eight hundred and sixty-seven appointed Her Majesty's Counsel for Nova Scotia, so long as they are such counsel, according to seniority as such counsel, and members of the bar to whom from time to time patents of precedence are granted.

Precedence of  
other members.

2. The remaining members of the bar shall, as between themselves, have precedence in the courts in the order of their call to the bar.

3. The right of precedence which may appertain to CHAP. 108.  
 any member of the bar when acting as counsel for Her Majesty, or for any Attorney-General of Her Majesty in any matter depending in the name of Her Majesty, or of the Attorney-General before such courts, shall not be affected by the above sections.

Precedence of any member of the bar when acting as counsel for Her Majesty, &c.

4. No one shall practise as an attorney or barrister unless he shall have been duly admitted.

Who may practise.

5. The council of the Nova Scotia Barristers' Society shall make and publish rules and regulations for the examinations, preliminary, intermediate, and final, of law students, and shall specify the subjects upon which students shall be examined, and may prescribe text books upon any of the subjects of examination, such rules and regulations to be subject to the approval of the judges of the Supreme Court of Nova Scotia; and the council of the said society shall have power from time to time to ordain that a certificate of having passed a successful examination at any such school, college, or other institution of learning as they shall name in such ordinance, and of such grade as they shall ordain, shall upon such terms as to payment of an additional fee as they shall prescribe, be accepted in lieu of and shall have the same force, validity, and effect as an examination either preliminary, intermediate, or final, as they shall ordain, conducted under the rules and regulations in this section first mentioned, and all such ordinances may be from time revoked, annulled or amended.

Council of Bar Society to make rules for examination.

6. No person shall be received as a law student or articled clerk by any barrister, unless he shall have successfully passed the prescribed preliminary examination, or such examination as shall be ordained in lieu thereof under the provisions of the last preceding section, and a certificate of having passed such examination shall be annexed to the articles of clerkship or duplicate thereof not later than three months after filing the same.

No person to be received as articled clerk unless he pass preliminary examination, &c.

7. Every person applying to be examined previous to his being articled to a barrister shall notify the secretary of the Nova Scotia Barristers' Society in writing of his intention to do so, one week before the date fixed for such examination, and shall pay the said secretary the fee of ten dollars for such examination, for which fee a receipt shall be given.

Notice for preliminary examination to be given.

Fee for examination.

8. The term of service for law students and articled clerks shall be computed from the time of filing the articles of clerkship or duplicate thereof with the secretary of the Nova Scotia Barristers' Society, who shall give a receipt therefor.

Term of service, how computed.



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Intermediate examination.

9. An examination shall take place once in every year, to be called the intermediate examination, to which any articled clerk or law student may be admitted upon payment of a fee of ten dollars to the said secretary, for which a receipt shall be given, provided notice of intention to be examined is given to the secretary in writing one week before the date of the examination, or if such candidate wishes to be examined elsewhere than in Halifax, then two weeks before the date of the examination.

Time of holding examinations to be appointed by council.

10. The time and place for holding the preliminary, intermediate, and final examinations in each year shall be appointed from time to time by the council of the said society, and shall be published in two or more daily newspapers in the city of Halifax continuously for one month previous to the holding thereof, and in the case of country students may be held in the towns where such students may have prosecuted their studies, under the supervision of an examiner to be appointed by the council of the Bar Society, and such examiner, before entering upon his duties as such, shall make an affidavit before a justice of the peace as follows:—

Provision for examination of country students.

I, A. B., of ———, appointed to hold the intermediate examination of articled clerks at ———, do solemnly swear that I have not communicated and will not communicate to any person whomsoever any information with respect to the nature or purport of the questions contained in the examination papers to be used at the said intermediate examination for students-at-law for the present year, nor suffer nor permit any person whomsoever to have access to or to inspect such examination papers until the opening of such examination; and further, that I will conduct the said examination faithfully and impartially, and will not knowingly suffer or permit any candidate, at such examination to bring into the examination room any books or writings or memoranda to assist such candidate at such examination.

A. B.

Sworn to before me at ———, in the County of ———, this ——— day of ———, A. D. 18—.

———, J. P.

Such affidavit shall be enclosed and returned with the examination papers under seal to the secretary of the Nova Scotia Barristers' Society.

Final examination.

11. Except as hereinafter by this Chapter provided, no law student or articled clerk shall present himself for final examination excepting when he is in the last year of his term of service under articles, having first given notice of his intention to attend such final examination at least

one week previous thereto, and having paid to the secretary CHAP. 108. the sum of twenty dollars for the general purposes of the society, which sum shall be in lieu of all fees heretofore paid to the society and to the prothonotary in connection with the final examination of law students and articleed clerks, and their admission as barristers and attorneys, and no person shall be admitted to such examination who shall not produce a certificate of his having successfully passed the intermediate examination hereinbefore provided, or such examination as the council shall have ordained in lieu thereof.

12. The secretary of the Nova Scotia Barristers' Society shall, after each examination, preliminary or final, give the treasurer of said society a list of the names of all candidates who, having given notice, failed to attend such examination, or, having attended, failed to pass, and the treasurer shall return to each of such candidates one half of the sum previously paid by him. Portion of fee returned in certain cases.

13. Any law student of the full age of twenty-one years who shall have served under articles of clerkship for a period of four years with a barrister, or who being at the time of applying for final examination a bachelor of laws, or having been at the time of being articleed as such law student a bachelor of arts of any college or university, shall have served under such articles for a period of three years, whether such articles are the original ones for the whole term or a transfer thereof, or new articles for the residue of such term, and shall not have been in any employment other than attendance at an institution of legal education, which would have the effect of interfering with his reasonable attendance and service at the office of the barrister to whom he has been articleed, to all of which such barrister shall certify, and shall have passed the prescribed preliminary, intermediate and final examinations, or such examinations as shall under the provisions hereinbefore contained be accepted in lieu thereof, and shall have filed in the prothonotary's office at Halifax satisfactory certificates to that effect, together with a certificate of good moral character from the barrister with whom he last served, shall be admitted a barrister and attorney on taking the following oath :

"I, A. B., do swear that I will truly and honestly demean myself in the practice of a barrister, attorney, solicitor, or proctor in all and every of the courts of this Province in which I shall be employed as such, according to the best of my knowledge and ability. So help me God."

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Admission, when to be moved for.

14. The admission of every student duly qualified for admission to the bar shall be moved for by the president of the Nova Scotia Barristers' Society, or in his absence by the vice-president, on any day during term, or on the first or last days of the civil sittings at Halifax next preceding the date of the expiration of the articles of clerkship of such student, or any time thereafter.

Death of barrister with whom student is articulated.

15. In the event of the death of the barrister with whom any law student is articulated, such student may be articulated to another barrister, and having served the remaining time required by law he shall be admitted an attorney and barrister under this Chapter, on passing the usual examination.

Certificates to be given by Secretary of Barristers' Society.

16. The certificates heretofore given by the prothonotary of the Supreme Court of Nova Scotia for the county of Halifax, relative to the admission of barristers and attorneys, shall hereafter be given by the secretary of the Nova Scotia Barristers' Society, whose certificate shall be equivalent thereto; and no fee shall hereafter be exacted by said prothonotary for any services in connection with the admission of barristers and attorneys except the fee of fifty cents for signing and filing the rule of court for the admission of such barrister and attorney, and the further sum of fifty cents for each oath.

How students of other Provinces of the Dominion may become barristers in Nova Scotia.

17. Notwithstanding anything hereinbefore contained, the Nova Scotia Barristers' Society may by special resolution provide that any person who has been under articles of clerkship in any other province of the Dominion for the same period that he would have been required to have served under articles in this Province in order to be admitted to final examination, may be admitted to the final examination next after the passing of such resolution, and any person so permitted to attend such final examination who shall successfully pass the same shall be entitled to be admitted a barrister of the Supreme Court of Nova Scotia, on taking the following oath:

"I, A. B., do swear that I will truly and honestly demean myself in the practice of a barrister in all and every of the courts of this Province in which I shall be employed as such, according to the best of my knowledge and ability.  
A. B."

Barristers of other courts admitted to practice.

18. A barrister of any court in Great Britain and Ireland shall be entitled to be admitted to practice as a barrister and attorney on filing a satisfactory certificate of his being a barrister at the time of application, and of his good moral character; and a barrister or attorney of any court in Her Majesty's colonies, and an attorney of any court in Great Britain or Ireland, on filing a satisfactory certificate

of his being a barrister or attorney at the time of applica-  
 tion, and of his good moral character, and also of his having  
 served as an artied clerk for a term equal to that herein-  
 before prescribed for artied clerks in this Province, and  
 who shall undergo a satisfactory examination as herein-  
 before provided for, shall be entitled to be admitted an  
 attorney on taking the foregoing oath: Provided however,  
 that barristers of Her Majesty's Supreme Court in any  
 of Her Majesty's dominions in which the same privileges  
 are extended to barristers of the Supreme Court of this  
 Province, on producing certificates of their admission and  
 of good moral character, shall be entitled to admission as  
 barristers of the Supreme Court of Nova Scotia.

CHAP. 108.

19. Any one entitled to be admitted an attorney of the  
 Supreme Court shall be entitled to be admitted a barrister  
 as well.

Attorney enti-  
 tled to be admit-  
 ted a barrister.

20. No attorney shall permit any person, not an  
 attorney, other than his artied clerk actually serving in  
 his office, to sue out any writ or process, or to prosecute or  
 defend any action in his name.

Restriction as to  
 suing out pro-  
 cess, &c.

21. Barristers of the Supreme Court shall be counsel,  
 advocates, proctors and solicitors of the Court of Vice  
 Admiralty and all courts within this Province, and as such  
 shall be entitled to prosecute and defend all causes therein,  
 and shall have such seniority and precedence therein as  
 they are entitled to in the Supreme Court, but nothing  
 herein contained shall interfere with or affect the whole-  
 some control which the Queen's Courts are authorized to  
 exert over the several practitioners therein, or to prevent  
 such court from suspending, silencing, dismissing or striking  
 off the roll any barrister, advocate, attorney, solicitor or  
 proctor for malpractice or misconduct.

Barristers' priv-  
 ileges, prece-  
 dence, &c.

22. No barrister not actually practising his profession,  
 except only the Prothonotary at Halifax, being a barrister,  
 shall take or retain any law student as an artied clerk.

Practising bar-  
 risters only to  
 have clerks.

23. No barrister or attorney shall have at any one  
 time more than three artied clerks.

Number of arti-  
 cled clerks  
 limited.

24. Every barrister of the Supreme Court of this Pro-  
 vince is hereby empowered to take acknowledgments of  
 married women of the execution of deeds throughout this  
 Province, and to administer oaths to subscribing witnesses  
 to deeds relative to the execution of the same throughout  
 this Province, and to certify all such acknowledgments of  
 married women and of the attestation of such witnesses, in  
 the same manner and to the same extent as a justice of the  
 peace is now authorized to do. No fee shall be charged or  
 taken by any barrister for services performed under this  
 section.

Barrister may  
 take acknow-  
 ledgments.

CHAP. 109. 25. The passing of the intermediate examination shall not be obligatory upon any law student under indenture previous to May, 1884, but any such law student may attend such examination.

Law student articulated previous to May, 1884, need not pass intermediate examination.

## CHAPTER 109.

### OF JUDGES, JUSTICES, AND OTHER JUDICIAL OFFICERS.

Judge, &c., being ratepayer, &c., not disqualified from acting. 1. No judge, justice of the peace, or person empowered by law to exercise judicial functions, shall be incapable of acting in the discharge of any judicial duties, in any cause, matter, or proceeding, by reason of his being or having been interested as one of several ratepayers, or as one of any other class of persons liable, in common with others, to contribute to, or to be benefitted by, any fund which may be affected by the disposition or determination of such cause, matter or proceeding.

Disqualification, when valid objection. 2. No disqualification, such as is referred to in the preceding section, shall be held to be a valid objection, defence, or answer, to any decision, suit, or proceeding, whether such decision was made before the tenth day of March, A. D. 1882, or made thereafter; provided, however, that this Chapter shall not be held to apply to any cause, matter, or proceeding in which proceedings were before the tenth day of March, A. D. 1882, instituted for the purpose of bringing the same on appeal to the Supreme Court of the Province.

## CHAPTER 110.

### OF PETITION OF RIGHT.

Supreme Court to take cognizance of matters under Dominion Act relative to "Petition of Right." The Supreme Court of this Province is hereby authorized and empowered to take cognizance of any matter under the Act, passed by the Parliament of Canada during its session in the year 1875, intituled, "An Act to Provide for the Institution of Suits against the Crown by Petition of Right, and Respecting Procedure in Crown Suits," and to administer the rights by such Act conferred in accordance with the procedure therein defined.

## CHAPTER 111.

OF THE SUPREME COURT OF CANADA AND THE EXCHEQUER  
COURT OF CANADA.

1. The Supreme Court of Canada, and the Exchequer Court of Canada, or the Supreme Court of Canada alone, according to the provisions of the Act of the Parliament of Canada, known as "The Supreme and Exchequer Court Act," shall have jurisdiction in the following cases:

Special jurisdiction provided for.

(1.) Of controversies between the Dominion of Canada and this Province.

(2.) Of controversies between any other Province of the Dominion which may have passed, or may hereafter pass, an Act similar to this Chapter, and this Province.

(3.) Of suits, actions, or proceedings in which the parties thereto by their pleadings, have raised the question of the validity of an Act of the Parliament of Canada, or of an Act of the Legislature of this Province, when in the opinion of the Supreme Court of Nova Scotia such question is material, and in such case the said Supreme Court of Nova Scotia shall, at the request of the parties, and may without such request, order the case to be removed to the Supreme Court, in order to the decision of such question.

2. In case sittings of the Court of Exchequer of Canada are appointed to be held in any city, town, or place in which a court house is situated, the Judge presiding at any such sittings shall have in all respects the same authority as a judge of the Supreme Court of Nova Scotia at *nisi prius* in regard to the use of the court house, and other buildings or apartments set apart in the county for the administration of justice: Provided, however, that nothing in this section shall be construed to deprive the Supreme Court, or any County Court of Nova Scotia, or any of the judges of said courts, of the use and authority which said court, and the judges thereof, have heretofore had and exercised of and over the court house, and other buildings mentioned herein, during any term or sittings of the said Supreme Court of Nova Scotia.

Power of presiding Judges to occupy court rooms.

## TITLE XXIV.

### OF THE LIMITATION OF ACTIONS.

#### CHAPTER 112.

##### OF THE LIMITATION OF ACTIONS.

Actions which require to be brought within six years.

1. No action of assumpsit, trespass *quare clausum fregit*, detinue, trover, replevin, debt grounded upon any lending or contract without specialty, or for rent, account, or upon the case, shall be brought but within six years next after the cause of action.

A promise, to take a case out of the Statutes, must be in writing.

2. In any action grounded upon simple contract, no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract, whereby to take any case out of the operation of the preceding section, or to deprive any party of the benefit thereof, unless such acknowledgement or promise shall be in some writing signed by the party chargeable thereby, or his agent duly authorized to make such acknowledgment or promise; and where there shall be two or more joint contractors or executors or administrators of any such contractor, no such joint contractor, executor or administrator, shall lose the benefit of the preceding section by reason only of any written acknowledgment or promise made or signed by any other of them, or by the agent of any other of them. But nothing herein contained shall alter or take away, or lessen the effect of any payment of any principal or interest made by any person whomsoever; and in any action to be commenced against two or more joint contractors, or executors or administrators, if it shall appear at the trial or otherwise that the plaintiff though, barred by this provision as to one or more of such joint contractors, or executors or administrators, shall nevertheless be entitled to recover against any other of the defendants, by virtue of a new acknowledgment or promise or otherwise, judgment may be given and costs allowed for the plaintiff, as to such defendant against whom he shall recover, and for the other defendants against the plaintiff.

Cases of joint contractors, co-executors, &c.

3. If any defendant in an action on any simple contract, shall plead any matter in abatement, to the effect that any other person ought to be jointly sued, and issue be joined on that plea; and it shall appear at the trial, that the action could not by reason of this Chapter be maintained against the other person named in such plea, the issue joined in such plea shall be found against the party pleading the same. CHAP. 112.  
Issue on plea in abatement for non-joinder under this Chapter, how found.

4. No endorsement or memorandum of any payment, written or made upon any promissory note, bill of exchange or other writing, by or on behalf of the party to whom such payment shall be made, shall be deemed sufficient proof of such payment, so as to take the case out of the operation of this Chapter. Endorsements by payee not evidence.

5. This Chapter shall apply to the case of any debt on simple contract, alleged by way of set-off on the part of any defendant, either by plea, notice or otherwise. Set-off due on simple contract within Statute.

6. All actions of account, or for not accounting, and suits for such accounts as concern the trade of merchandise between merchant and merchant, their factors or servants, shall be commenced and sued within six years after the causes of such actions or suits; and no claim in respect of a matter which arose more than six years before the commencement of any such action or suit, shall be enforceable by action or suit by reason only of some other matter of claim comprised in the same account having arisen within six years next before the commencement of such action or suit. Limitation of actions of account, &c.

7. No action of trespass for assault, battery, wounding or imprisonment, and no action on the case for words, and no action or prosecution for taking illegal interest, shall be commenced but within one year next after the cause of action, or after the offence committed. Actions which require to be brought within one year.

8. Actions by or against minors, married women or persons insane, may be commenced within the like period after the removal of the disability, as is allowed for bringing the action in ordinary cases. Actions against minors, &c., within what time to be brought.

9. Actions against persons out of the Province may be commenced within the like period after the return of such persons as is allowed for bringing the action in ordinary cases: Provided that where the cause of action or suit lies against two or more joint debtors, the person who shall be entitled to the same shall not be entitled to any time within which to commence and sue any such action or suit against any one or more of such joint debtors who shall not be out of the Province at the time such cause of action or suit accrued, by reason only that some other one or more of such joint debtors was or were at the time Actions against persons out of Province.  
Case of joint debtor.



CHAP. 112. such cause of action accrued, out of the Province; and such person so entitled, as aforesaid, shall not be barred from commencing and prosecuting any action or suit against the joint debtor or joint debtors who was or were out of the Province at the time the cause of action or suit accrued, after his or their return into the Province, by reason only that judgment was already recovered against any one or more of such joint debtors who was not or were not out of the Province at the time aforesaid.

When judgment reversed, &c., new action may be brought within year.

10. If in any action judgment be given for the plaintiff, and the same be reversed by error, or if judgment be arrested after verdict, then the plaintiff may commence a new action within one year after such judgment reversed or arrested.

LANDS, SPECIALTIES, ETC.

Limitation of time in which to make entry or distress, or bring action to recover land.

11. No person shall make an entry or distress, or bring an action to recover any land or rent, but within twenty years next after the time at which the right to make such entry or distress or to bring such action shall have first accrued to some person through whom he claims, or if such right shall not have accrued to any person through whom he claims, then within twenty years next after the time at which the right to make such entry or distress or to bring such action shall have first accrued to the person making or bringing the same.

Right of action, when first accrued.

12. In the construction of this Chapter the right to make an entry or distress, or bring an action to recover any land or rent, shall be deemed to have first accrued at such time as hereinafter is mentioned, (that is to say):—

On dispossession.

when the person claiming such land or rent, or some person through whom he claims, shall, in respect of the estate or interest claimed, have been in possession or in receipt of the profits of such land, or in receipt of such rent, and shall, while entitled thereto, have been dispossessed, or have discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or

On death.

rent were or was so received: when the person claiming such land or rent shall claim the estate or interest of some deceased person who shall have continued in such possession or receipt in respect of the same estate or interest until the time of his death, and shall have been the last person entitled to such estate or interest who shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time of such death: when the person claiming such lands or rent shall claim in respect of an estate or interest in possession granted, appointed, or

Alienation.

otherwise assured by any instrument (other than a will) CHAP. 112.  
 to him, or some person through whom he claims, by a person being in respect of the same estate, or interest in the possession or receipt of the profits of the land, or in receipt of the rent, and no person entitled under such instrument shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time at which the person claiming as aforesaid, or the person through whom he claims became entitled to such possession or receipt by virtue of such instrument: when the estate or interest claimed shall have been an estate or interest in reversion or remainder, or other future estate or interest, and no person shall have obtained the possession or the receipt of the profits of such land or the receipt of such rent in respect of such estate or interest, then such right shall be deemed to have first accrued at the time at which such estate or interest became an estate and interest in possession; and when the person claiming such land or rent, or the person through whom he claims shall have become entitled by reason of any forfeiture or breach of condition, then such right shall be deemed to have first accrued when such forfeiture was incurred or such condition was broken.

Reversionary interest.

Forfeiture or breach of condition.

13. When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent as tenant at will, the right of the person entitled subject thereto, or the person through whom he claims, to make an entry or distress or bring an action to recover such land or rent, shall be deemed to have first accrued either at the determination of such tenancy or at the expiration of one year next after the commencement of such tenancy, at which time such tenancy shall be deemed to have determined. Provided always, that no mortgagor or *cestui que trust* shall be deemed to be a tenant at will, within the meaning of this section, to his mortgagee or trustee.

Right when first accrued in case tenant at will.

14. When any person shall be in possession or receipt of the profits of any land or in receipt of any rent, as tenant from year to year or other period, without any lease in writing, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress or to bring an action to recover such land or rent, shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenancy shall have been received (which shall last happen).

In case of tenant from year to year.

15. No person shall be deemed to have been in possession of any land within the meaning of this Chapter merely by reason of having made an entry thereon.

Mere entry not deemed possession.

## CHAP. 112.

Continual or other claim not to preserve right of entry.

Possession of one co-parcener, &c., not to be possession of the others.

Acknowledgment in writing given to person entitled, or his agent, to be equivalent to possession or receipt of rent.

Persons under disability of infancy, &c., allowed ten years from termination of disability, &c.

No action, &c., shall be brought after forty years from action accrued.

16. No continual or other claim, upon or near any land, shall preserve any right of making an entry or distress, or of bringing an action.

17. When any, or more, of several persons entitled to any land or rent as co-parceners, joint tenants, or tenants in common, shall have been in possession or receipt of the entirety or more than his or their undivided share or shares of such lands, or of the profits thereof, or of such rent, for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last-mentioned person or persons or of any of them.

18. When any acknowledgment of the title of the person entitled to any land or rent shall have been given to him or his agent in writing, signed by the person in possession or in receipt of the profits of such land, or in receipt of such rent, then such possession or receipt of or by the person by whom such acknowledgment shall have been given, shall be deemed, according to the meaning of this Chapter, to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment shall have been given, at the time of giving the same; and the right of such last-mentioned person or any person claiming through him, to make an entry or distress or bring an action to recover such land or rent shall be deemed to have first accrued at and not before the time at which such acknowledgment, or the last of such acknowledgments if more than one, was given.

19. If at the time at which the right of any person to make an entry or distress or bring an action to recover any land or rent shall have first accrued as aforesaid, such person shall have been under any of the disabilities hereinafter mentioned, (that is to say,) infancy, coverture, idiocy, lunacy, unsoundness of mind, or absence from the Province, then such person, or the persons claiming through him may, notwithstanding the period of twenty years hereinbefore limited shall have expired, make an entry or distress or bring an action to recover such land or rent at any time within ten years next after the time at which the person to whom such right shall first have accrued as aforesaid shall have ceased to be under any such disability, or shall have died (which shall have first happened).

20. No entry, distress, or action shall be made or brought by any person who, at the time at which his right to make an entry or distress, or to bring an action to recover any land or rent shall have first accrued, shall be

under any of the disabilities hereinbefore mentioned, or by CHAP. 112.  
 any person claiming through him, but within forty years  
 next after the time at which such right shall have first  
 accrued ; although the person under disability at such time  
 may have remained under one or more of such disabilities  
 during the whole of such forty years, or although the term  
 of ten years from the time at which he shall have ceased  
 to be under any such disability, or have died, shall not  
 have expired.

21. No action or suit or other proceeding shall be brought to recover any sum of money secured by any mortgage, judgment, or lien, or otherwise charged upon or payable out of any land or rent, at law or in equity, or any legacy, but within twenty years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same ; unless in the meantime some part of the principal money, or some interest thereon, shall have been paid, or some acknowledgment of the right thereto shall have been given in writing, signed by the person by whom the same shall be payable or his agent, to the person entitled thereto or his agent ; and in such case no such action or suit or proceeding shall be brought but within twenty years after such payment or acknowledgment, or the last of such payments or acknowledgments, if more than one was given.

Mortgages and legacies, &c., deemed satisfied at end of 20 years, if no interest be paid or acknowledgment in writing in the meantime.

22. No arrears of dower nor any damages on account of such arrears shall be recovered or obtained by any action or suit for a longer period than six years next before the commencement of such action or suit.

No arrears of dower recoverable after six years.

23. No arrears of rent or of interest in respect of any sum of money charged upon or payable out of any land or rent, or in any respect of any legacy, or of any damages in respect of such arrears of rent or interest, shall be recovered by any distress, action or suit but within six years next after the same respectively shall have become due, or next after an acknowledgment of the same in writing shall have been given to the person entitled thereto or his agent signed by the person by whom the same was payable or his agent.

No arrears of rent or interest shall be recoverable after six years.

24. All actions for rent upon an indenture of demise, all actions upon any bond or other specialty, and all actions of *scire facias* upon any recognizance, or actions for an escape, or for money levied on any execution, and all actions for penalties, damages, or sums of money given to the party grieved, by any statute now or hereafter to be in force, shall be commenced and sued within the time and limitation hereinafter expressed, and not after : that is to

Limitation in particular actions.

CHAP. 112. say, the said actions for rent upon an indenture of demise or upon any bond or other specialty, actions of *scire facias* upon recognizance before the seventh day of May, A. D., 1876, or within twenty years after the cause of such actions or suits, but not after; the said actions by the party grieved, within two years after the cause of such actions or suits, but not after; and the said other actions within six years after the cause of such actions or suits, but not after: Provided that nothing herein contained shall extend to any action given by any statute where the time for bringing such action is or shall be by any statute specially limited.

Actions on demises, on bonds, &c.

Damages.  
Other actions.

Actions under statutes exempted.

Limitation in case of infancy, lunacy, coverture, or absence from Province.

25. If any person who is or shall be entitled to any such action or suit, or to such *scire facias*, is or shall be at the time of any such cause of action accrued within the age of twenty-one years, *feme covert*, *non compos mentis*, or out of the Province, then such person shall be at liberty to bring the same action, so as such person commences the same within such time after his or her coming to or being of full age, discoverd, of sound memory, or returned to the Province, as other persons having no such impediment should according to the provisions of this Chapter have done; and if any person against whom there shall be any such cause of action is or shall be at the time such cause of action accrued out of the Province, then the person entitled to any such cause of action shall be at liberty to bring the same against such person within such times as are before limited after the return of such person into the Province.

Written acknowledgment or part payment.

26. If any acknowledgment shall have been made either by writing signed by the party liable by virtue of such indenture, specialty, or recognizance, or his agent, or by part payment, or part satisfaction on account of any principal or interest being then due thereon, it shall and may be lawful for the person entitled to such action to bring his action for the money remaining unpaid, and so acknowledged to be due, within twenty years after such an acknowledgment by writing or part payment or part satisfaction as aforesaid, or in case the person entitled to such action shall at the time of such acknowledgment be under such disability as aforesaid, or the party making such acknowledgment be at the time of making the same out of the Province, then within twenty years after such disability shall have ceased as aforesaid, or the party shall have returned into the Province, as the case may be; and the plaintiff in any such action on any indenture, specialty

or recognizance may by way of replication state such acknowledgment, and that such action was brought within the time aforesaid to answer to a plea of this statute.

CHAP. 112.  
Acknowledgment may be stated in reply.

27. No claim which may be lawfully made at the common law by custom, prescription or grant, to any way or other easement, or to any water-course, or the use of any water to be enjoyed or derived upon, over or from any land or water of Our Lady the Queen, her heirs or successors, or being the property of any ecclesiastical or lay person, or body corporate, when such way or other matter as herein last before mentioned shall have been actually enjoyed by any person claiming right thereto without interruption for the full period of twenty years, shall be defeated or destroyed by showing only that such way or other matter was first enjoyed at any time prior to such period of twenty years; but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated; and where such way or other matter as herein last before mentioned shall have been so enjoyed as aforesaid for the full period of forty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was enjoyed by some consent or agreement expressly given, or made for that purpose by deed or writing.

Certain claims not defeated by shewing only that the enjoyment began more than 20 years previous.

Indefeasible if enjoyed over 40 years.

23. When the access and use of light to and for any dwelling-house, work-shop, or other building shall have been actually enjoyed therewith for the full period of twenty years without interruption, the right thereto shall be deemed absolute and indefeasible, any local usage or custom to the contrary notwithstanding; unless it shall appear that the same was enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing. Provided always, that this section shall not extend to the city of Halifax.

Access and use of lights enjoyed for 20 years indefeasible.

Exception.

Halifax.

29. Each of the respective periods of years in the twenty-seventh and twenty-eighth sections mentioned shall be deemed and taken to be the period next before some suit or action wherein the claim or matter to which such period may relate shall have been or shall be brought into question; and no act or other matter shall be deemed to be an interruption within the meaning of this Chapter, unless the same shall have been or shall be submitted to or acquiesced in for one year after the party interrupted shall have had or shall have notice thereof, and of the person making or authorizing the same to be made.

Terms of years, how calculated; and what acts only shall be interruption to prescription.

## CHAP. 112.

No presumption admissible on proof of enjoyment for less period than prescribed by Chapter.

30. In the several cases mentioned and provided for in sections twenty-seven and twenty-eight of this Chapter, no presumption shall be allowed or made in favor or support of any claim, upon proof of the exercise or enjoyment of the right or matter claimed for any less period of time or number of years than for such period or number mentioned in said sections as may be applicable to the case and to the nature of the claim.

Time during which party could not act through infancy, &c., not to be computed against him.

31. The time during which any person otherwise capable of resisting any claim to any of the matters in sections twenty-seven and twenty-eight mentioned shall have been or shall be an infant, idiot, *non compos mentis*, *feme covert*, or tenant for life, or during which any action or suit shall have been pending, and which shall have been diligently prosecuted, until abated by the death of any party or parties thereto, shall be excluded in the computation of the periods hereinbefore mentioned, except only in cases where the right or claim is hereby declared to be absolute and indefeasible.

Exception.

Terms of years, &c., excluded from computation.

32. When any land or water upon, over, or from which any such way or watercourse or use of water in the twenty-seventh section mentioned shall have been or shall be enjoyed or derived, hath been or shall be held under or by virtue of any term of life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of any such way or other matter as herein last before mentioned during the continuance of such terms shall be excluded in the computation of the said period of forty years in case the claim shall within three years next after the end or sooner determination of such term be resisted by any person entitled to any reversion expectant on the determination thereof.

Claims of Her Majesty limited to 60 years.

33. No claim for lands or rent shall be made by Her Majesty but within sixty years after the right of action to recover such lands or rent shall have accrued.

## TITLE XXV.

OF SUITS AND PROCEEDINGS IN CERTAIN  
CASES.

## CHAPTER 113.

OF SUITS AGAINST EXECUTORS, ADMINISTRATORS, AND  
TRUSTEES.

1. Actions of trespass, or trespass on the case, may be maintained by executors or administrators for any injury to the real estate of the deceased, committed within six months previous to his decease, for which the deceased might have maintained such action, provided the action be brought within one year after his death; and such actions shall be instituted and maintained in the like manner as the deceased could have instituted and maintained the same in his lifetime.

Within what time executors, &c., may bring action for injuries to real estate of deceased.

2. Actions of trespass, or trespass on the case, may be maintained against the executors or administrators of a deceased person, for any injury done by him in his lifetime to the real or personal property of another; so as such injury shall have been committed within six months before his death; and so as such action shall be brought within six months after his executors or administrators shall have undertaken the administration of his estate.

Within what time actions of trespass, &c., may be brought against executors, &c., for injuries done by deceased.

3. An action of debt on simple contract may be maintained at common law against any executor or administrator.

Actions of debt maintainable against executors, &c.

4. Every legatee may recover the amount and value of his legacy, annuity or bequest, at common law, from the administrator with the will annexed, or executor, either by action for money had and received or otherwise.

Legacies, &c., recovered by action at common law.

5. Any executor being a residuary legatee may maintain an action at common law for money had and received or otherwise, against his co-executor, and may in like manner sue for and recover his ratable part thereof; and any other residuary legatee shall have the like remedy against an executor.

Executor being residuary legatee may sue his co-executor.

6. When two or more persons are named executors in a will and any of them shall neglect or refuse to act, and probate shall be granted to the other or others of them, it shall not be necessary to name the executor who has so

Executors to whom probate has not been granted need not be named in any suit.



CHAP. 113. refused or neglected, in any action or suit relating to the estate.

Executors, &c.,  
authorized to in-  
vest in deben-  
tures, &c.

7. Executors, administrators and trustees, unless where otherwise directed by the will or other instrument creating the trust, are hereby authorized to invest money and funds in their hands, or under their control, in the Government Savings Bank, or in Dominion or Provincial debentures; and the production of such Dominion or Provincial debentures, or other evidences of money so invested and deposited, shall be held equivalent to the production of the amount of money actually paid by any such executor, administrator, or trustee.

Proceedings on  
resignation of  
trustees, &c.

8. Upon the petition of any trustee appointed by deed, or of any executor appointed a trustee by any last will, asking his discharge from the trust or executorship, a judge of the Supreme Court may direct such preliminary inquiry, and with such notices to parties interested as he shall think fit, as to the terms upon which the resignation of such trustee or executor should be accepted; and the Supreme Court or any judge thereof may thereafter pass such order for the discharge of such trustee or executor as a due regard to his wishes and interest, and to the rights and interests of the persons interested in the execution of the trust, may require.

Removal of trust-  
tees, &c.

9. A petition may be presented in like manner, by any person interested in the execution of a trust, asking for the removal of any trustee or executor, and a like inquiry may be thereupon had, and such order passed by the Supreme Court or any judge thereof as a due regard to the rights and interests of the trustee or executor, and of the parties interested in the execution of the trust, may require.

Appointment of  
new trustees.

10. The Supreme Court or any judge thereof, shall have full power to appoint a new trustee in place of a trustee or executor so discharged or removed, or of any trustee removed from the jurisdiction of the court, or in case of the death, unfitness or incapacity of a trustee, and upon such terms as to security for the due execution of the trust as shall be deemed necessary; and when in consequence of such resignation or removal there shall be no acting trustee, the court or any judge thereof in their discretion may appoint new trustees, or cause the trust to be executed by one of the officers of the court under their direction.

Costs, how paid,  
&c.

11. The court may direct the costs of any proceedings under the three last sections to be taxed and paid out of the trust funds, or otherwise, as they shall think proper.

## CHAPTER 114.

## OF TRUSTS AND TRUSTEES.

1. The several words hereinafter named are herein used and applied as follows respectively, that is to say: Definition of terms.

The word "seised" shall be applicable to any vested estate for life, or of a greater description, and shall extend to estates at law or in equity, in possession or in expectancy, in any lands. "Seised."

The word "possessed" shall be applicable to any vested estate less than a life estate at law or in equity, in possession or in expectancy, in any lands. "Possessed."

The words "trust" and "trustee" shall extend to and include implied and constructive trusts, and shall extend to and include cases where the trustee has some beneficial estate or interest in the subject of the trust. "Trust."  
"Trustee."

The term "the court" shall mean the Supreme Court of Nova Scotia. "The court."

All other words not hereinbefore defined but hereinafter used shall be construed as nearly as may be in the sense in which corresponding words are defined in the English "Trustee Act of 1850." Construction of words not defined.

2. Where any infant shall be seised or possessed of any lands upon any trust it shall be lawful for the Supreme Court to make an order vesting such lands in such person in such manner and for such estate as the court shall direct; and the order shall have the same effect as if the infant trustee had been twenty-one years of age, and had duly executed a conveyance or assignment of the lands in the same manner and for the same estate. Case of infant trustee, court may make order

3. When any person solely seised or possessed of any lands upon any trust, shall be out of the jurisdiction of the court, or cannot be found, it shall be lawful for the court to make an order vesting such land in such person in such manner and for such estate as the court shall direct; and the order shall have the same effect as if the trustee had duly executed a conveyance or assignment of the lands in the same manner and for the same estate. If trustee out of jurisdiction, court may make order.

4. When any person shall be seised or possessed of any lands jointly with a person out of the jurisdiction of the court, or who cannot be found, it shall be lawful for the court to make an order vesting the lands in the person so jointly seised or possessed, or in such last mentioned person, together with any other person, in such manner and for such estate as the court shall direct; and the order shall have the same effect as if the trustee out of the Joint trustee out of jurisdiction.

CHAP. 114. jurisdiction, or who cannot be found, had duly executed a conveyance or assignment of the lands in the same manner and for the same estate.

In case of doubt as to which trustee was survivor. 5. Where there shall have been two or more persons jointly seised or possessed of any lands upon any trust, and it shall be uncertain which of such trustees was the survivor, the court may make an order vesting such lands in such person in such manner and for such estate as the court shall direct; and the order shall have the same effect as if the survivor had duly executed a conveyance or assignment of the lands in the same manner and for the same estate.

In case it is not known whether trustee last seised is living or dead. 6. Where any one or more persons shall have been seised or possessed of any lands upon any trust, and it shall not be known, as to the trustee last known to have been seised or possessed, whether he be living or dead, the court may make an order vesting such lands in such person, in such manner and for such estate as the court shall direct; and the order shall have the same effect as if the last trustee had duly executed a conveyance or assignment of the lands in the same manner and for the same estate.

In case trustee died intestate without heir, or heir or devisee not known. 7. When any person seised of any lands upon any trust shall have died intestate as to such lands without an heir, or shall have died and it shall not be known who is his heir or devisee, the court may make an order vesting such lands in such person in such manner and for such estate as the court shall direct; and the order shall have the same effect as if the heir or devisee of such trustee had duly executed a conveyance of the lands in the same manner and for the same estate.

In case trustee will not convey to person entitled. 8. Where any person jointly or solely seised or possessed of any lands upon any trust shall, after demand by a person entitled to require a conveyance or assignment thereof, or his lawful agent, have stated in writing that he will not convey or assign the same, or shall neglect or refuse to do so for twenty-eight days next after a proper deed for that purpose shall have been tendered to him, it shall be lawful for the court to make an order vesting such lands in such persons, in such manner and for such estate as the court shall direct; and the order shall have the same effect as if the trustee had duly executed a conveyance or assignment in the same manner and for the same estate.

In case lands converted into money by operation of laws relating to railways. 9. Where lands subject to a trust have been or shall be converted into money by the operation of any law relating to railways, such money shall be considered as land for the purposes of this Chapter, and shall be dealt

with as nearly as may be in conformity with the provisions CHAP. 114. thereof.

10. In every case where the court shall under this Chapter be enabled to make an order having the effect of a conveyance or assignment of any lands, it shall be lawful for the court, should it be deemed more convenient, to make an order appointing a person to convey or assign such lands; and the conveyance or assignment of the person so appointed shall, when in conformity with the terms of the order by which he is appointed, have the same effect in conveying or assigning the lands as an order of the court would in the particular case have had under this Chapter.

Court may appoint person to convey.

Effect of conveyance.

11. An order under any of the hereinbefore contained provisions concerning any lands subject to a trust, may be made upon the application of any person beneficially interested in such lands, whether under any disability or not, or upon the application of any person duly appointed as a trustee thereof.

Persons upon whose application orders may be made.

12. Where any person shall deem himself entitled to an order from the court under this Chapter, he may exhibit before any one of the masters of the court a statement of the facts whereon such order is sought to be obtained, and adduce evidence in support thereof; and if such evidence shall be satisfactory to the master, he shall give a certificate under his hand of the several material facts found by him to be true, and of his opinion that such person is entitled to an order in the form set forth in such certificate.

Person applying for order, to obtain certificate of master.

13. Any person who shall have obtained such certificate may apply by motion to the court for an order to the effect set forth in such certificate, or for such other order as such person shall deem himself entitled to upon the facts found by the master.

Motion thereon.

14. Any person so entitled to apply for an order may should he so think fit, present a petition in the first instance to the court for such order as he may deem himself entitled to, and may give evidence by affidavit or otherwise in support of such petition before the court, and may serve such person as he may deem entitled to service thereof.

May apply by petition and affidavit.

15. The court may upon the hearing of such petition direct a reference to a master to inquire into any facts which require such an investigation, or the court may direct such motion or petition to stand over, to enable the petitioner to adduce evidence or further evidence before the court, or to enable notice or further notice of such motion or petition to be served upon any person.

Proceedings upon hearing petition, &c.

CHAP. 114. 16. Upon the hearing of such motion or petition, whether any certificate or report of a master shall have been obtained or not, the court may dismiss such motion or petition with or without costs, or make an order thereupon in conformity with this Chapter.

Costs.

When facts proved, court may make order.

17. Whensoever, either by the evidence or the admissions of the parties, or by a report of a master, the facts necessary for an order under this Chapter shall appear to the court to be sufficiently proved, the court may, either upon the hearing of the cause or of any petition or motion, make such order under this Chapter.

Order founded on allegations of incapacity or absence of trustee, to be evidence of matter alleged.

18. Whenever any order shall be made under this Chapter for the purpose of conveying or assigning any lands, and such order shall be founded on an allegation of the personal incapacity of a trustee, or on an allegation that a trustee is out of the jurisdiction of the court, or cannot be found, in such case the fact that the court has made an order upon such an allegation shall be conclusive evidence of the matter so alleged in any court of law or equity upon any question as to the legal validity of the order: Provided that nothing herein contained shall prevent the court directing a re-conveyance or re-assignment of any lands conveyed or assigned by any order under this Chapter; and it shall be lawful for the court to direct any of the parties to any suit concerning such lands to pay any costs occasioned by the order under this Chapter, when the same shall appear to have been improperly obtained.

Proceedings when process cannot be served on trustee.

19. When, in any suit in such court, it shall be made to appear by affidavit that diligent search and inquiry has been made after any person made a defendant, who is only a trustee, to serve him with the process of the court, and that he cannot be found, it shall be lawful for the court to hear and determine such cause, and to make an absolute decree therein against every person who shall appear to them to be only a trustee, and not otherwise concerned in interest in the matter in question, in the same manner as if such trustee had been duly served with process, and had appeared and filed his answer thereto, and had also appeared by his counsel and solicitor at the hearing of such cause: Provided always that no such decree shall bind any person against whom the same shall be made without service of process upon him, for or in respect of any estate or interest which such person shall have at the time of the making of such decree for his own use or benefit, or otherwise, than as a trustee.

Assignment of personal property.

20. Any person shall have power to assign personal property now by law assignable, including chattels real, directly to himself and another person or persons or

corporation, by the like means as he might assign the CHAP. 114. same to another.

21. The *bonâ fide* payment to and the receipt by any person to whom any purchase or mortgage-money shall be payable, upon any express or implied trust, shall effectually discharge the person paying the same from seeing to the application, or being answerable for the misapplication thereof; unless the contrary shall be expressly declared by the instrument creating the trust or security. Payment of purchase or mortgage-money.

22. No trustee, executor, or administrator, making any payment, or doing any act *bonâ fide* under or in pursuance of any power of attorney, shall be liable for the money so paid, or the act so done, by reason that the person who gave the power of attorney was dead at the time of such payment or act, or had done some act to avoid the power. Provided, that the fact of the death, or of the doing of such act as last aforesaid at the time of such payment or act *bonâ fide* done as aforesaid by such trustee, executor, or administrator, was not known to him: Provided also that nothing herein contained shall in any manner affect or prejudice the right of any person entitled to the money against the person to whom such payment shall have been made, but that such person so entitled shall have the same remedy against such person to whom such payment shall be made as he would have had against the trustee, executor, or administrator, if the money had not been paid away under such power of attorney. Acts done under power of attorney.

23. Where an executor or administrator shall have given such or the like notices, as in the opinion of the court in which such executor or administrator is sought to be charged, would have been sufficient in the Court of Probate, for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator shall, at the expiration of the time named in the said notices, or the last of the said notices for sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets, or any part thereof, so distributed to any person of whose claim such executor or administrator shall not have had notice at the time of distribution of the said assets or a part thereof, as the case may be; but nothing in this Chapter contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, into the hands of the person or persons who may have received the same respectively. Distribution of assets by executor or administrator.

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Liability of trustees limited to money actually received.

24. Every deed, will, or other instrument creating a trust either expressly or by implication, shall, without prejudice to the clauses actually contained therein, be deemed to contain a clause in the words or to the effect following, that is to say: "That the trustees or trustee for the time being of the said deed, will, or other instrument shall be respectively chargeable only for such moneys, stocks, funds, and securities as they shall respectively actually receive, notwithstanding their respectively signing any receipt for the sake of conformity, and shall be answerable and accountable only for their own acts, receipts, neglects or defaults, and not for those of each other; nor for any bank, banker, broker, or other person with whom any trust moneys or securities may be deposited; nor for the insufficiency or deficiency of any stocks, funds, or securities, nor for any other loss, unless the same shall happen through their own wilful default respectively; and also that it may be lawful for the trustees or trustee for the time being of the said deed, will, or other instrument, to reimburse themselves or himself, or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers of the said deed, will, or other instrument."

Trustees, guardians, &c., may mortgage real estate for repairs.

25. Under an order to be obtained from the court upon grounds laid to the satisfaction of the court, it shall be lawful for trustees, guardians, and others standing in a fiduciary relation, to mortgage real estate or portions thereof for the purpose of putting, keeping and maintaining the same in proper repair. And mortgages so made shall operate as securities to the holders in the same way and to the same extent as if made by the parties whose interests are represented by the mortgagors. Provided that the court shall have power to apportion the charge for repairs, including interest on the sum borrowed, to and among the parties interested in the property, as may be just and equitable.

Court may apportion charge for repairs.

On application to master, he may order the service of application or dismiss with costs.

26. When any person shall under this Chapter apply to a master in the first instance, and adduce evidence for obtaining a certificate as foundation for an order, the master may order service of such application on any person, or dismiss it, and direct the costs of any person consequent thereon, when taxed by a judge, to be paid by the applicant; and all orders of a master under this Chapter shall be enforced by execution when directed by a judge.

Orders, how enforced.

Court may order costs to be paid out of proceeds of lands.

27. The court may order the costs and expenses of and relating to the petitions, orders, directions, conveyances, and assignments, to be made in pursuance of this Chapter, or any of them, to be paid and raised out of or from the

lands or the rents or produce thereof, in respect of which CHAP. 114. the same respectively shall be made, or in such manner as the court shall think proper.

28. Upon any petition under this Chapter to the court, it shall be lawful for the court to postpone making any order upon such petition until the right of the petitioner shall have been declared in a suit duly instituted for that purpose.

Court may postpone order until right of a petitioner is declared in a suit.

29. In cases where real estate has been or shall hereafter be conveyed in trust for erecting thereon houses for public worship, or dwelling or other houses or buildings intended for the accommodation of ministers of the Gospel or clergymen officiating or engaged to officiate for any church or congregation of Christians, and the mode of appointing new or other trustees than the grantees is provided for in the deed of conveyance creating such trust, or otherwise in writing; when a vacancy shall occur by reason of the death, removal, resignation or displacement of any trustee, it shall not be held necessary that the remaining or surviving trustee or trustees, if any, shall make or shall have made any deed or conveyance to the newly-appointed trustee, in order to invest him with the estate, functions, trusts and powers of the original trustees under such deed or declaration of trust or instrument in writing creating such trust and directing the appointment of future or succeeding trustees; but such newly-appointed trustee shall thereupon, without deed or other conveyance, be seised in fee or other estate to the uses and trusts created, as fully and completely as were the original grantees: Provided that the terms or conditions for such appointment are duly complied with.

Appointment of new trustees for church lands where appointment is provided for.

30. Whenever the mode of appointing new or other trustees than the grantees is not provided for in the deed of conveyance creating such trust or otherwise in writing, when a vacancy shall occur by reason of the death, removal, resignation or displacement of any trustee, it shall be lawful for the members of the church or congregation for whose use or in trust for whom the said property was conveyed, from time to time, as occasion shall require, at any meeting convened after public notice thereof from the pulpit of the church for two consecutive Sundays preceding such meeting, or by printed notices posted in one or more conspicuous places in and about the house of public worship of such church or congregation for such two preceding Sundays, which published or printed notices shall state the place and hour of such meeting and the object for which the same is convened, by any resolution passed by not less than two thirds of the members present, at such

Where appointment not provided for.



CHAP. 115. meeting to appoint one or more trustees in place of any trustee or trustees dying, removing, resigning or being displaced as aforesaid, in whom the trusts and powers of the original trustees under such deed or declaration of trust or instrument in writing containing such trust shall immediately vest, and who shall thereupon become seised in fee or other estate to the uses and trusts, as were the original grantees under the deed: Provided always that a copy of such resolution, verified under the oath, before a justice of the peace, of the pastor or clerk for the time being of such church or congregation, shall be filed with the clerk of the municipality for the county where such real estate is situate within one month after the passing of such resolution. In default of the filing of such resolution, all acts done thereunder, and all estates created thereby, shall determine and be void and of none effect.

New trustee appointed by *cestui que trust*.

31. When in and by any trust deed the *cestui que trust* has power to appoint a new trustee in case of the death of the old trustee, and such appointment is made according to the terms of said deed, all the property, rights, powers and authorities mentioned in said deed shall thereupon vest in said new trustee.

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## CHAPTER 115.

### OF ARBITRATION.

Power of arbitrators, when irrevocable; judge may enlarge time for award.

1. The power of arbitrators appointed under a rule or submission containing an agreement that it should be made a rule of the Supreme Court, shall be irrevocable, unless the court or a judge shall otherwise order; and the court or a judge may enlarge the time for making an award thereunder.

Attendance of witnesses, how enforced.

2. In any case referred to arbitration, whether by rule of court or otherwise, the arbitrators shall have power to issue subpoenas for the attendance of witnesses before them at any time or place therein named; and any person on whom any such subpoena shall have been served, and who shall have been tendered such fees for travel and attendance as are fixed by law for witnesses in the Supreme Court, shall be liable, in case of disobedience of such subpoena, to the same punishment and liabilities as if the said subpoena had issued from the Supreme Court for the attendance of the witness at a trial therein.

Punishment for disobedience of subpoena.

Production of documents.

3. No person shall be compelled to produce under any rule or order any writing or document that he would not be compelled to produce at a trial, nor to attend on more than two consecutive days.

Witness need not attend more than two days.

4. Arbitrators so appointed may administer oaths to the witnesses. CHAP. 115.

Arbitrators can swear witnesses. Justices may administer oaths in certain cases.

5. When arbitrators are appointed under a submission not containing any agreement that it shall be made a rule of court, any justice of the peace may administer oaths to the witnesses in the presence of one or more of the arbitrators.

6. If it be made to appear, at any time after the issuing of the writ, to the satisfaction of the court or a judge, upon the application of either party, that the matter in dispute consists wholly or in part of matters of mere account which cannot conveniently be tried in the ordinary way, it shall be lawful for such court or judge upon such application, if they or he think fit, to decide such matter in a summary manner, or to order that such matter either wholly or in part be referred to an arbitrator or arbitrators appointed by the parties, upon such terms as to costs and otherwise as such court or judge shall think reasonable; and the decision or order of such court or judge, or the award or certificate of such referee, shall be enforceable by the same process as the finding of a jury upon the matter referred; and in case the parties or either of them shall not within the time specified in the order appoint arbitrators, it shall be lawful for the court or judge to appoint one or more arbitrators, to whom the cause shall be referred.

Power of court or judge upon application to direct arbitration before trial.

7. If it shall appear to the court or a judge that the allowance or disallowance of any particular item or items in such account depends upon a question of law fit to be decided by the court, or upon a question of fact fit to be decided by a jury, or by a judge, upon the consent of both parties, as hereinbefore provided, it shall be lawful for such court or judge to direct a case to be stated, or an issue or issues to be tried; and the decision of the court upon such case, and the finding of the jury or judge upon such issue or issues, shall be taken and acted upon by the arbitrator, as the case may be, as conclusive.

Special case may be stated and question of fact tried.

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

Arbitrator may state special cases.

## CHAP. 115.

Power of judge to direct arbitration at time of trial.

9. If upon the trial of any issue of fact by a judge under this Chapter, it shall appear to the judge that the questions arising thereon involve matter of account which cannot conveniently be tried before him, it shall be lawful for him, on the application of either party, to order that such matter of account be referred to an arbitrator appointed by the parties, upon such terms as to costs and otherwise, as such judge shall think reasonable; and the award or certificate of such referee shall have the same effect as hereinbefore provided as to the award or certificate of a referee before trial; and it shall be competent for the judge to proceed to try and dispose of any other matters in question, not referred, in like manner as if no reference had been made.

Proceedings before and power of arbitrator.

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

Power of judge to send back matter for re-consideration, to arbitrator.

11. In case of any such arbitration or reference as aforesaid the court or a judge shall have power at any time, and from time to time, to remit the matters referred, or any or either of them, to the re-consideration and re-determination of the said arbitrator or referee, upon such terms as to costs and otherwise as to such court or judge may seem proper.

Application to set aside award.

12. All applications to set aside any award made on a compulsory reference under this Chapter, shall and may be made to the court or a judge within one month next following the publication of the award to the parties, whether made in vacation or term; and if no such application is made, or if no rule is granted thereon, or if any rule granted thereon is afterwards discharged, such award shall be final between the parties.

Enforcing of awards within period for setting them aside.

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

Objections to award to be stated in notice of motion.

14. Where a notice of motion to set aside an award is given, the several objections thereto intended to be insisted on at the time of moving shall be stated in general terms in the notice.

15. Whenever the parties to any deed or instrument in writing to be hereafter made or executed, or any of them shall agree that any then existing or future differences between them, or any of them shall be referred to arbitration, and any one or more of the parties so agreeing, or any person or persons claiming through or under him or them, shall nevertheless commence any action against the other party or parties, or any of them, or against any person or persons claiming through or under him or them in respect of the matters so agreed to be referred, or any of them, it shall be lawful for the court in which the action or suit is brought, or a judge thereof, on application by the defendant or defendants, or any of them, before appearance and defence or answer, upon being satisfied that no sufficient reason exists why such matters cannot be or ought not to be referred to arbitration according to such agreement as aforesaid, and that the defendant was at the time of the bringing of such action or suit and still is ready and willing to join and concur in all acts necessary and proper for causing such matters so to be decided by arbitration, to make a rule or order staying all proceedings in such action or suit, on such terms as to costs and otherwise as to such court or judge may seem fit: Provided always that any such rule or order may at any time afterwards be discharged or varied as justice may require.

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In action commenced by one party after all have agreed to arbitration, court or judge may stay proceedings.

16. If in any case of arbitration the document authorizing the reference provide that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator; or if any appointed arbitrator refuse to act, or become incapable of acting, or die, and the terms of such document do not show that it was intended that such vacancy should not be supplied, and the parties do not concur in appointing a new one; or if, where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator, such parties or arbitrators do not appoint an umpire or third arbitrator; or if any appointed umpire or third arbitrator refuse to act, or become incapable of acting, or die, and the terms of the document authorizing the reference do not show that it was intended that such a vacancy should not be supplied, and the parties or arbitrators respectively do not appoint a new one; then in every such instance any party may serve the remaining parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire or third arbitrator respectively; and if within seven clear days after such notice shall have been served no arbitrator, umpire or third arbitrator be appointed, it shall be lawful

On failure of parties to appoint, the judge may appoint an arbitrator, umpire or third arbitrator.

CHAP. 115. for the court or a judge, upon the application of the party having served such notice as aforesaid, to appoint an arbitrator, umpire or third arbitrator, as the case may be, and such arbitrator, umpire and third arbitrator respectively shall have the like power to act in the reference, and make an award as if he had been appointed by consent of all parties.

When reference is to two arbitrators and one party fails to appoint, the other party may appoint arbitrator to act alone.

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

When reference is to two arbitrators, they may appoint an umpire.

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

Award to be made in three months unless court or parties enlarge the time.

19. The arbitrator acting under any such document or compulsory order of reference as aforesaid, or under any order referring the award back, shall make his award under his hand, and unless such document or order respectively shall contain a different limit of time, within three months after he shall have been appointed, and shall have entered on the reference, or shall have been called upon to act by a notice in writing from any party; but the parties or their attorneys may by consent in writing enlarge the term for making the award: and it shall be lawful for the court of which such submission, document, or order is or may be made a rule or order, or for any judge thereof, for good cause to be stated in the rule or order for enlargement, from time to time to enlarge the term for making the award;

and if no period be stated for the enlargement in such consent or order for enlargement, it shall be deemed an enlargement for one month; and in any case where an umpire shall have been appointed, it shall be lawful for him to enter on the reference in lieu of the arbitrators, if the latter shall have allowed their time or their extended time to expire without making any award, or shall have delivered to any party or to the umpire a notice in writing stating that they cannot agree.

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

Rule to deliver possession of land pursuant to award to be enforced as a judgment in ejectment.

21. Every agreement or submission to arbitration by consent, whether by deed or instrument in writing not under seal, may be made a rule of court on the application of any party thereto; unless such agreement or submission contain words purporting that the parties intend that it shall not be made a rule of court.

Submission in writing may be made rule of court unless a contrary intention appear.

22. Where a submission has been made a rule of the Supreme Court, the court may enforce obedience to any award duly made under such submission by directing a judgment to be entered or execution to issue for the amount thereof with costs, or otherwise to carry into effect such award.

Obedience to award; how enforced.

23. The judge taxing the costs of any cause referred under this Chapter shall allow such fees to the arbitrators making the award as he may think reasonable.

Fees to arbitrators to be allowed on taxation of costs.

## CHAP. 116.

## CHAPTER 116.

OF COMPENSATION TO THE FAMILIES OF PERSONS KILLED  
BY ACCIDENT.

Where death is caused by wrongful act of another, party who would have been liable to action for damages at suit of deceased, shall continue to be liable.

1. Whenever the death of a person shall be caused by the wrongful act, neglect, or default of another, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof; then, and in every such case, the person who would have been liable if death had not ensued shall be liable to an action of damages, notwithstanding the death of the party injured, and although the death shall have been caused under such circumstances as amount in law to felony.

Such actions shall be by personal representation, for benefit of relatives of deceased.

Measure and disposal of damages.

2. Every such action shall be for the benefit of the wife, husband, parent or child of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased; and in any such action the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting the costs not recovered (if any) from the defendant, shall be divided among the before-mentioned parties in such shares as the jury by their verdict shall find and direct.

Only one action, and within twelve months.

3. Not more than one action shall lie for and in respect of the same subject-matter of complaint, and every such action shall be begun within twelve months after the death of such deceased person.

Plaintiff should deliver certain particulars with summons.

4. In every such action the plaintiff on the record shall, with the writ of summons, deliver to the defendant or his attorney full particulars of the person or persons for and on behalf of whom such action shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.

Meaning of "parent" and "child" in this Chapter.

5. In this Chapter the word "parent" shall include father, mother, grand-father, grand-mother, step-father and step-mother; and the word "child" shall include son, daughter, grand-son, grand-daughter, step-son and step-daughter.

## CHAPTER 117.

## OF SECURING THE LIBERTY OF THE SUBJECT.

1. The Act of the Imperial Parliament, passed in the thirty-first year of the reign of King Charles the Second entitled, "An Act for the Better Securing the Liberty of the Subject and for the Prevention of Imprisonment Beyond the Seas," and the Act of the Imperial Parliament, passed in the fifty-sixth year of the reign of King George the Third, entitled, "An Act for More Effectually Securing the Liberty of the Subject," and all Acts of the Imperial Parliament passed in addition to, or amendment of, or on the same subject as the said recited Acts, or either of them, shall have full force and effect in this Province as far as the same are applicable therein; and the Supreme Court and the judges thereof have the same authority and power over cases within the purview of such Acts here as the courts mentioned in such Acts and the judges thereof have in England; and the rights and remedies, and the obligations, punishments and penalties conferred and imposed by the said statutes, or either of them, are conferred and imposed upon and made applicable to persons within this Province, as fully as if such Acts were re-enacted and specially extended to the courts, judges, officers, and persons within this Province.

Certain Acts of the Imperial Parliament to have force in this Province.

Judges of Supreme Court same power as judges in England.

Rights, &c., conferred on inhabitants of this Province.

2. The preceding enactment shall not be construed to abrogate or abridge the remedy by the writ of *habeas corpus* at common law, but the same exists in full force, and is the undoubted right of the people of this Province; and in all motions and proceedings on writs of *habeas corpus*, where parties are charged on preliminary arrest with criminal offences, or where the care and custody of infant children are concerned, the judges of the Supreme Court shall deal therewith according to the principles of equitable jurisprudence and the exigencies of the case.

First section not to take away common law right to *habeas corpus*.

Supreme Court to apply equitable principles.

3. The writ of *habeas corpus*, whether under statute or common law, may be applied for to and be granted by a judge of the Supreme Court, returnable before himself or returnable before the court, and may be applied for to and may be granted by the court, returnable to itself or to a judge at chambers in vacation. And where it would be attended with unnecessary delay, expense or inconvenience to bring in the body of a party illegally restrained of his liberty before the court or judge, the court or any judge of the Supreme Court, upon sufficient cause shown, or by or on behalf of any person confined in any jail or prison, may, in their discretion, and they are hereby empowered,

*Habeas corpus* may be granted by Supreme Court or judge thereof.

Who may give rule or order instead of writ.



CHAP. 117. (instead of granting fiat for a writ of *habeas corpus cum causa* requiring the keeper of such jail or prison to bring the prisoner before the court or a judge in order that the legality of such imprisonment may be inquired into and discharge, bailment or recommitment had thereon), by rule of the court, or by order of the judge in writing, signed by him with his name, addition of office, and place of residence, to require and direct such keeper to return to the court or to the judge whether or not such person is detained in prison, together with the day and cause of his having been taken and detained.

Keeper to make return upon receipt of order.

4. It shall be the duty of such keeper immediately upon the receipt of such rule or order to make a true and full return in writing to the court, or to such judge, of the day and cause of such taking and detention to the same effect as a return to a writ of *habeas corpus* would now be made; such return always to include a copy of the process, warrant or order, upon which the said prisoner is held, where the same is of a criminal nature, or upon any summary complaint or conviction before any justice of the peace; and such judge may enforce obedience to such order by process of contempt, in the same manner as he may compel proper return to be made to a writ of *habeas corpus*.

Return, how enforced.

Proceedings after keeper's return.

5. Upon return to such order, the court or judge may proceed to examine into and decide upon the legality of the imprisonment, and make such order, require such verification, and direct such notices or further returns in respect thereof as may be deemed necessary or proper for the purpose of justice; and may by rule of court or by order in writing signed as aforesaid, require the immediate discharge from prison, or may direct the bailment, of such prisoner in such manner and for such purpose and with the like effect and proceeding as is now allowed upon *habeas corpus*; such bail when ordered to be entered into before any justice of the peace, specially named in such order, or any justice of the county or place where there is no such nomination.

Keeper to communicate order to prisoner and furnish copy.

6. It shall be the duty of such keeper immediately upon the receipt of any rule of court or order of a judge in relation to a prisoner in custody, to communicate the same to such prisoner and to give him a true copy thereof if demanded, and to obey the requirement of the same.

Court or judge may require production of proceedings, documents, &c., and inquire into the truth of returns.

7. In all cases, whether under statute or at common law, or under the provisions of this Chapter, it shall be lawful for the court or a judge to require the production of all such proceedings, documents and papers relating to the matter in question, before whomsoever and in whose possession soever, as to the court or judge may appear

necessary for the elucidation of the truth, and may also examine into the truth of the return to any writ of *habeas corpus*, or rule or order granted under this Chapter, in the same manner as such examination is provided for in cases under the before mentioned Act of Parliament, passed in the fifty-sixth year of the reign of King George the Third. CHAP. 117.

8. Every wilful neglect or disobedience of a rule of court, or the order of a judge in relation to a prisoner, shall be punishable by fine and imprisonment, or either, at the discretion of the court, as for a contempt. Neglect or disobedience punished as a contempt.

9. The matter of the return made to the order of a judge may be heard and decided on by any other judge of the Supreme Court; who shall have the same power and jurisdiction in respect thereof as the judge by whom the first order was made. Return may be decided upon by another judge.

10. No order made under this Chapter shall require or enable the keeper of any jail or prison to discharge the prisoner from any commitment or charge other than that specified in such order, but it shall be the duty of such keeper in every return to specify the several causes of commitment and detention, if more than one; and if between the time of making the return and receiving an order for the discharge or bailment, any other warrant, process or order shall have been delivered to him, requiring the detention of the prisoner upon any charge of a criminal nature, or summary complaint or conviction, such keeper shall without any further order make and transmit to the court or a judge an additional return, with a copy of such warrant, process or order, and the time of receiving the same, which may be dealt with by the court or judge as if made pursuant to an order for that purpose granted. Order not to enable keeper to discharge for other matter. In case of other process. Nothing herein to abridge civil remedy of party imprisoned. Order of exemption of keeper. Provided that no person who may have been falsely imprisoned shall be deprived or restrained from his remedy by civil suit against any person who may have illegally caused such imprisonment; but the court or judge by whom relief may be afforded may by order exempt any such keeper of a jail from civil suit who may appear to him to have acted upon the warrant or order of any judge or justice, according to the requirements of the same without malice or evil intent, although such warrant or order may be bad in form or substance; and any such order of exemption may be pleaded in bar to any action brought against such keeper or notice given thereof as an additional ground of defence under any Act of this Province in such case made and provided.

11. Nothing herein contained shall be construed to contravene or conflict with any legislation (*intra vires*) of the Parliament of Canada. Not to conflict with Dominion legislation.

## CHAP. 118.

## CHAPTER 118.

## OF THE RELIEF OF INDIGENT DEBTORS CONFINED IN JAIL.

Commissioners for relief, how appointed.

1. Commissioners for giving relief to indigent debtors confined in jail shall be appointed by the Governor-in-Council; and all commissioners heretofore appointed for giving relief to insolvent debtors, and all commissioners so appointed for taking affidavits to hold to bail and recognizances of bail, shall be commissioners for giving relief to indigent debtors confined in jail within the meaning of this Chapter, without any further appointment as such.

Application for relief, to whom made by petition.

2. When any person imprisoned upon any writ of mesne process, execution or attachment for non-payment of money, or for damages in actions of tort, issuing out of any court, including the Probate Court, shall desire to take the benefit of this Chapter, he shall exhibit a petition to a judge or other officers as hereinafter mentioned, praying for his discharge. Application shall be made to a judge of the Supreme Court, or to two commissioners, in all matters issuing out of the Supreme Court; to a judge of the County Court, or to two commissioners, in all matters issuing out of the County or Probate Court; or to two commissioners or stipendiary magistrate, or to two justices, in cases where the debtor is imprisoned under a *capias* or execution issued by a justice or justices of the peace, or stipendiary magistrate, or from any municipal or town court. The petition shall be accompanied by a schedule of all the property, real and personal, of the debtor, except such as shall be exempted from execution, of all debts due or growing due to him, and of all securities by him held, which might by any possibility be made available, or which might become assets in the hands of his representatives, and also, so far as the same can be obtained by the debtor, a statement showing the amount of his liabilities.

Schedule to accompany petition, and what to contain.

Summons thereupon to issue.

3. The judge, justices, stipendiary magistrate or commissioners shall thereupon forthwith issue a summons calling upon the creditor at whose suit the debtor is imprisoned, at a certain time or place to be therein named, to show cause why such prisoner should not be discharged.

Copy of summons and schedule, how served; time for service.

4. True copies of the summons and schedules shall be served on the creditor, his attorney or agent, or where a debtor is imprisoned at the suit of the Crown, on the Attorney-General, at least forty-eight hours before the time appointed for showing cause; and where the creditor, his attorney or agent, or the Attorney-General shall reside more than twenty miles from the place so appointed,

twenty-four hours additional shall be allowed for every additional twenty miles. The service of such copies, if not admitted, must be proved on oath by the person serving the same, which oath may be administered by a justice of the peace, and a further time may be allowed for the examination, in the discretion of the judge or commissioners, where the creditor himself has not been served.

CHAP. 118.  
Service, how proved.

5. In cases where the debtor is imprisoned under process issued out of a court of justices of the peace, or that of any stipendiary magistrate, or from any municipal or town court, the notice required by the next preceding section, may, in cases where the plaintiff is not resident in the county, be served upon the agent at whose instance the process was issued. If there be no agent within the county, and if the plaintiff's place of residence be out of the Province or unknown, the notice may be left with the justice or stipendiary magistrate whose name is first subscribed to the process, and the same shall be considered a service upon the plaintiff.

Service on agent when plaintiff non-resident in cases out of justice's court.  
No agent in county, and plaintiff's place of residence out of Province or unknown.

6. At the time appointed the judge, justices, stipendiary magistrate or commissioners shall, if desired by the creditor, administer an oath to the debtor in the following form :

Oath to be administered if required.

"I, A. B., do swear that I will true answer make to all such questions as shall be asked me on this examination."

7. The judge, justices, stipendiary magistrate, or commissioners shall give an order for the discharge of the debtor, unless in the cases hereinafter provided for, upon the debtor's making a full disclosure of his affairs and making an assignment to the creditor in trust for the payment of the debt, of his real and personal property, except such property as shall be exempted from execution, upon his taking and subscribing an oath to the following effect :

Order for discharge upon assignment made and oath taken.

"I, A. B., do swear that the schedule annexed to my petition contains a true account of all the real and personal estate which I or any person in trust for me at the time of my petition had, or now have, or may hereafter have, except such property as is exempted from execution ; and that I have not since my imprisonment or before, conveyed in trust for myself or otherwise, except as in such schedule mentioned, any part of my property whereby to defraud any of my creditors. So help me God."

Form of oath.

The taking of which oath may be waived by the creditor ; and in case of imprisonment under mesne process, if the judge, justices, stipendiary magistrate, or commissioners are satisfied of the existence and amount of the debt, the debtor shall sign a confession of judgment

Confession may be required in case of mesne process.

CHAP. 118. therefor, and shall do such other acts as the judge, justices, stipendiary magistrate or commissioners shall direct.

Debtors at the suit of the Crown, how discharged.

8. When a debtor is imprisoned at the suit of the Crown, and the judge, justices, stipendiary magistrate, or commissioners are satisfied of the insolvency of such debtor, he or they shall certify the same, together with an inventory of all the property of the debtor, and the Governor may thereupon by warrant under his hand and seal order the Attorney-General to assent on behalf of Her Majesty to the discharge of the insolvent, either with or without an assignment of his property.

Debtor may be remanded on affidavit.

9. If the creditor, or in his absence his attorney or agent, shall forthwith, in the presence of the judge, justices, stipendiary magistrate, or commissioners, make an affidavit in writing, stating that he has good reason to be dissatisfied with the account given, and believes that the debtor has not disclosed the whole truth, or has other property than that by him admitted, the judge, justices, stipendiary magistrate, or commissioners shall remand the debtor and appoint another day for the further hearing of the matter, and shall on that day again meet and discharge or remand the debtor, or make such further order as the justice of the case may require.

In cases of fraud, debtor may be remanded for a period not exceeding one year, without privilege of jail limits.

10. When upon the examination of the debtor, or of any witnesses that may be produced on either side, and which witnesses shall be bound to attend on subpoena as in actions pending in the Supreme Court, the debt shall appear to have been fraudulently contracted, or any fraudulent circumstances have occurred in respect of such debt, or on the refusal of the debtor to make a full disclosure of his affairs as provided for in this Chapter, or in respect of the delay of payment thereof, or in respect of the conduct of the debtor with regard to the disposition of his property, or in cases of tort where the judge, justices, stipendiary magistrate, or commissioners shall be of opinion that such tort was wilful and malicious, the judge, justices, stipendiary magistrate, or commissioners may remand the debtor to be confined without the privilege of jail limits, for such time under one year as he or they shall deem proper under the circumstances; at the end of which time the debtor shall be discharged on making the affidavit and assignment of his property before a judge, stipendiary magistrate, or any two commissioners or justices.

When remanded for fraud, witnesses' fees to be taxed against debtor.

11. Where the judge, justices, stipendiary magistrate, or commissioners shall remand the debtor for fraud, such judge, justices, stipendiary magistrate, or commissioners shall tax the fees of witnesses attending on behalf of the

creditor, and if not paid shall remand the debtor for such further period as he or they may deem right. CHAP. 118.

12. The stipendiary magistrate, justices of the peace, or commissioners shall, at the close of the hearing, declare his or their decision, and if an appeal be demanded shall make no order, but grant such appeal and remand the debtor. Decision at the close of hearing and appeal therefrom.

13. The debtor shall be entitled to an appeal as of right, without making any affidavit therefor; but the creditor, or in his absence his attorney or agent, demanding an appeal, shall make an affidavit in writing that he is dissatisfied with the decision, and that the appeal is not made for the purpose of delay only, but that substantial justice may be done him therein. The court of appeal shall hear and determine such appeal, and make such order therein from time to time as it shall deem proper, such orders being not inconsistent with this Chapter. Debtor entitled to appeal as of right.

14. The stipendiary magistrate, justices, or commissioners shall return to the court of appeal the evidence taken before him or them, which shall be used on such appeal: Provided always that the debtor or creditor shall be at liberty to supplement such evidence by other additional testimony. Evidence below to be returned to court of appeal.

15. If on the appeal—where the creditor is the appellant—the court of appeal shall confirm the decision of the stipendiary magistrate, justices, or commissioners, the debtor shall be entitled to receive from the creditor the sum of \$1.00 per day for each and every day that the debtor shall be confined in jail, from the date of such decision to his final discharge, unless the court of appeal shall determine and certify or cause the officer of such court to certify that the appeal was not frivolous or vexatious; and the court shall also adjudge that the costs of the appeal be paid to such debtor; and the court of appeal shall make an order to that effect, upon which execution may issue to recover the amount. Costs, &c., may be allowed to debtor by court of appeal in certain cases.

16. The judge, stipendiary magistrate, commissioners, justices, and the court of appeal shall return to the Supreme or County Court, as the case may be, of the county, all the papers connected with their proceedings on such applications and appeals. Papers to be returned to the Supreme or County Court.

17. Upon receiving an order to that effect from the judge, stipendiary magistrate, or commissioners, justices or court of appeal, the officers in whose custody such prisoner shall be, shall discharge him therefrom as regards the suit expressed in the order. Prisoner to be discharged by order.

## CHAP. 118.

Property of debt-  
or liable for  
debt, after his  
discharge.

18. Where any person shall be discharged under the provisions of this Chapter, any property owned by him at the time of the judgment, or subsequently acquired, and not in the possession of a *bond fide* holder without notice, may nevertheless be levied upon for the debt under execution issued on the same judgment.

Sheriff's fees,  
who liable there-  
for on a dis-  
charge.

19. When any person shall be discharged under the provisions in this Chapter, the party at whose suit he has been committed to jail shall be liable to pay the sheriff his fees for the service, return and travel necessary in serving the process under which the party was arrested.

Fees.

20. The fees mentioned in the schedule hereto shall hereafter be paid to the stipendiary magistrate, commissioners, and justices, for services in connection with the relief of indigent debtors.

Penalty for re-  
fusal to act.

21. If any stipendiary magistrate, commissioner, or justice, on being tendered the above fees, shall refuse or neglect to sign the order and attend the examination of the debtor, he shall forfeit the sum of forty dollars, to be recovered by the debtor or any other person who will sue for the same as a private debt

Creditor may ap-  
ply to have deb-  
tor examined.

22. When any debtor is on the limits of the jail or confined in the jail building, and shall not have made an assignment, or his estate has not been placed in compulsory liquidation under any Act of the Dominion of Canada relating to insolvency, and shall have made no application for relief under this Chapter, the creditor or person at whose suit the debtor is under arrest may by petition apply to a judge, stipendiary magistrate, two justices, or two commissioners, as provided for in this Chapter, for an order or summons to bring such debtor before him or them for examination, at a time and place within the county therein named.

Warden in cer-  
tain cases may  
call upon credi-  
tor to show why  
debtor should not  
be discharged  
from custody.

23. In cases where a debtor is confined in jail under execution, and neglects or refuses or has neglected or refused for the period of three months to apply for his discharge under the provisions of this Chapter, it shall be lawful for the warden of the municipality in which the debtor is confined to apply by petition to a judge, stipendiary magistrate, two justices or two commissioners, as provided for by section 2 of this Chapter, to issue a summons or order to the judgment creditor, or to the person at whose instance he is in custody, requiring him to appear before them to shew cause why said debtor should not be discharged from custody on making the assignment provided for in this Chapter. Any summons or order is to be made returnable at the same time and to be served in the same manner as in other cases; but it shall not be necessary to annex the schedule provided in this Chapter.

24. On receiving a summons or order under sections CHAP. 118. 22 and 23, or a written notice, signed by the judge, stipendiary magistrate, commissioners or justices issuing the summons or order, as the case may be, requiring such debtor to be brought before them, it shall be the duty of the sheriff or jailer in whose custody the debtor may be to bring him before the said judge, stipendiary magistrate, commissioners or justices on the day appointed for a hearing, and the debtor may be sworn and examined, and may be discharged, remanded or imprisoned in the same way and on the same terms as if he had himself petitioned for his discharge, and in case the said judge, stipendiary magistrate, commissioners or justices shall order his discharge from custody, it shall be the duty of the sheriff or jailer to discharge him accordingly.

Proceedings to bring debtor before judge, &c.

25. If after hearing all parties interested, no sufficient cause as provided in this Chapter shall be shewn against his discharge, it shall be the duty of the judge, stipendiary magistrate, justices or commissioners, on such debtor making the assignment by law required, to sign an order for his discharge from custody under the process expressed in the said summons or order, and in case the debtor shall refuse to make such an assignment, the judge stipendiary magistrate, justices or commissioners shall thereupon execute the same, and it shall have all the effect of transferring his property, real and personal, as if the debtor himself had executed the same, and thereupon he shall be discharged from custody.

Proceedings at hearing.

26. All acts performed by any judge of the County Court under Chapter 137 of the Revised Statutes, 3rd series, for the relief of insolvent debtors, to the year 1878, are hereby validated, and no action shall be sustained in respect thereof.

Acts of county judges validated.

27. In all cases under process issued out of the Supreme Court, the court of appeal shall be the Supreme Court or a judge thereof, if the court be sitting, or a judge be present in the county, at the time the decision appealed from is made; and if the court be not sitting or there be no judge present in the county at the time, then the court of appeal shall be the County Court of the county where the debtor is confined, or a judge of the County Court. In all cases under process issued out of the county court, the court of appeal shall be the County Court, sitting in the county where the debtor is confined, or the judge thereof. In matters and process issued out of the stipendiary or justice's court, the court of appeal shall be the County Court for the county where the debtor is confined, or the judge thereof; and in case no such judge at the time of

Appeal provided for.



CHAP. 119. making such decision shall be in the county, or if he be incapacitated by sickness, or unable to attend from press of other business, then a special sessions of the peace shall be the court of appeal. The special sessions shall be summoned by the prothonotary or clerk, as the case may be, and shall be held within three days, and shall consist of any three justices not concerned in giving the decision. The decision of the court of appeal shall be final.

SCHEDULE OF FEES.

Each commissioner, on signing order.....	\$1 00
Each stipendiary magistrate or justice, on signing order.....	50
If proceeding adjourned, same fees each day of attendance.	
Each commissioner, on signing final order.....	50
Each stipendiary magistrate or justice, on signing final order.....	25

CHAPTER 119.

OF ESTREATS.

Duplicate rolls and forfeited recognizances.

1. Unless otherwise provided, all fines and forfeited recognizances imposed or forfeited by or before the Supreme Court in any county of the Province, and all forfeited recognizances transmitted to or removed into the Supreme Court, and filed with the prothonotary of the county shall, in the county of Halifax, within twenty-one days after the adjournment of such court, and in any other county before the presiding judge leaves the county, be fairly entered, and extracted on a roll by the prothonotary, which roll shall be made out in duplicate, and shall be signed by the prothonotary.

Rolls, how to be disposed of.

2. One of the said rolls shall remain deposited in the office of the prothonotary, and the other of such rolls shall, as soon as the same is prepared, be sent by the prothonotary with a writ of execution, according to the form in the schedule to this Chapter, to the sheriff of the county in which such court was held.

Sheriff's authority under writ of execution.

3. Such writ shall be an authority to the sheriff for proceeding to the immediate levying and recovering of such fines and forfeited recognizances on the goods and chattels, lands and tenements of the several persons named therein, or for taking into custody the bodies of such persons respectively, in case sufficient goods and chattels,

lands or tenements, cannot be found whereof the sums CHAP. 119. required can be made, and every person so taken shall be lodged in the common gaol of the county until satisfaction is made, or until the Supreme Court or a judge thereof, upon cause shown by the party as hereinafter mentioned, makes an order in the case, and until such order has been fully complied with.

4. In every case of default whereby a recognizance has become forfeited, if the cause of absence is made known to the court, it may on consideration of such cause, and considering also whether by the non-appearance of such person the ends of justice have been defeated or delayed, forbear to order the recognizance to be estreated, and with respect to all recognizances estreated, and all fines imposed by any court for the non-attendance of any juror or constable, or of any public officer bound to attend at any such court, if it appears to the satisfaction of the judge who presided at such court that the absence of the person for whose appearance any recognizance was entered into, or that the absence of any person fined for non-attendance, was owing to circumstances which rendered such absence justifiable, such judge may make an order, directing that the sum forfeited upon such estreated recognizance or the fine imposed in any such case as aforesaid, shall not be levied. Powers of court with respect to estreats.

5. For such purpose the prothonotary, before sending to the sheriff any roll with a writ of execution, as directed by this Chapter, shall submit the same to the judge who presided in the county for his revision, and such judge may make a minute on the said roll and writ of any such forfeited recognizances and fines as he thinks fit to direct not to be levied, and the sheriff shall observe the direction in such minute written upon such roll or writ, or endorsed thereon, and shall forbear accordingly to levy any such forfeited recognizance or fine. Roll to be submitted to presiding judge.

6. If upon any writ issued under this Chapter, the sheriff takes lands or tenements in execution, he shall advertise the same in like manner as he is required to do before the sale of lands in execution, in other cases, and no sale shall take place in less than twelve months from the time the writ comes to the hands of the sheriff. Lands taken, how advertised and sold.

7. The prothonotary shall at the foot of each roll, made out as herein directed, make and take an affidavit in the following form, that is to say:—"I, A. B., prothonotary of the Supreme Court at (*name the county*), make oath, that this roll is truly and carefully made up and examined, and that all fines and recognizances which were imposed or forfeited at or by the court therein mentioned, and which Prothonotary to verify roll by affidavit.

CHAP. 119. in right and due course of law ought to be levied and paid, are to the best of my understanding inserted in the said roll, and that in the said roll are also contained and expressed all such fines as have been paid to or received by me, either in court or otherwise, without any wilful discharge, omission, misnomer, or defect whatever. So help me God." Which affidavit any commissioner of the Supreme Court for the county is hereby authorized to administer.

Security may be given by person levied on.

8. If any person on whose goods and chattels a sheriff or other officer is authorized to levy any such forfeited recognizance, gives security to the said sheriff or other officer for his appearance at the return day mentioned in the writ in the court into which such writ is returnable, then and there to abide the decision of such court or a judge, and also to pay such forfeited recognizance or sum of money to be paid in lieu or satisfaction thereof, together with all such expenses as may be adjudged and ordered by the court, such sheriff or officer shall discharge such person out of custody, and in case such person does not appear in pursuance of his undertaking, the court or a judge may forthwith order a writ of execution to be issued against the surety or sureties of the person so bound as aforesaid.

Court may order discharge, &c.

9. The Supreme Court into which any writ of execution under this Chapter is returnable, may inquire into the circumstances of the case, and may in its discretion order the discharge of the whole of the forfeited recognizance or sum of money paid, or to be paid in lieu or satisfaction thereof, and make such order thereon as to such court appears just, and such order shall accordingly be a discharge to the sheriff, or to the party according to the circumstances of the case.

Duty of sheriff at return of writ.

10. The sheriff to whom any writ is directed under this Chapter, shall return the same on the day on which the same is made returnable, and shall state on the back of the roll attached to such writ what has been done in the execution thereof, and such return shall be filed in the court into which such return is made.

Certified copy to be sent to Attorney-General.

11. A copy of such roll and return, certified by the prothonotary, shall be forthwith transmitted to the Attorney-General of the Province, with a minute thereon of any of the sums therein mentioned which have been remitted by order of the court in whole or in part, or directed to be forborne under the authority of this Chapter.

Sheriff to pay over money received.

12. The sheriff shall without delay pay over all money by him collected to the officer or person entitled to receive such money under section 96 of chapter 171 of the Revised

Statutes, third series, and the same shall be appropriated in CHAP. 119. the manner mentioned in section 97 of said chapter.

13. The fees to be taken by the sheriff and prothonotary respectively under this Chapter, shall be as follows:

## PROTHONOTARY.

Making up estreats of each term.....	\$1 00
Entering and extracting upon a roll, in duplicate, the fines and forfeited recognizances, each term, making oath to same, and transmitting to the sheriff .....	2 00
Making out and delivering to the sheriff the writ of execution thereon .....	50
Making out and certifying copy of roll and return of the sheriff, transmitting it to the Attorney General.....	1 00
Drawing order of the judge to estreat and put in suit .....	50

## SHERIFF.

Levying fines or recognizances estreated, the same allowance as on executions in civil proceedings.

All such fees shall be a charge upon the county or district treasury.

14. Whenever recognizances have been entered into before a justice or justices of the peace, and have become forfeited, it shall be the duty of the justice or justices having the custody of such recognizances, to return the same to the Supreme Court as soon as possible after such forfeiture has been incurred, accompanied by a report of the circumstances showing the forfeiture, and such recognizances shall be deemed to have been removed into the Supreme Court, within the meaning of the first section of this Chapter, and shall be dealt with in the manner prescribed by this Chapter in respect to recognizances.

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 SCHEDULE.
 

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## WRIT OF EXECUTION.

VICTORIA, by the Grace of God, &c, &c.

To the Sheriff of \_\_\_\_\_.

You are hereby commanded to levy on the goods and chattels, lands and tenements, of all and singular the persons mentioned in the roll or extract to this writ

CHAP. 119. annexed, all and singular the debts and sums of money upon them severally imposed and charged as therein is specified, and if any of the said several debts cannot be levied, by reason of no goods or chattels, lands or tenements, being to be found belonging to the said parties respectively, then and in all such cases, that you take the bodies of such parties, and keep them safely in the gaol of your county, there to abide the judgment of our Supreme Court, upon any matter to be shown by them respectively, or otherwise to remain in your custody as aforesaid, until such debt is satisfied, unless any of such persons respectively give sufficient security for his appearance at the said court on the return day hereof, for which you will be held answerable, and what you do in the premises make appear before us in the Supreme Court, on the first day of the next term (or sitting) at —, and have then and there this writ.

Issued the — day —, A. D., 18—.

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## CHAPTER 120.

### OF INQUIRIES CONCERNING PUBLIC MATTERS.

Power conferred on persons conducting inquiry. 1. Whenever the Governor-in-Council deems it expedient to cause inquiry to be made into and concerning any matter connected with the good government of the Province, or the conduct of any part of the public business thereof, or the administration of justice therein, and such inquiry is not regulated by any special law, the Governor may, by the commission in the case, confer upon the person or persons by whom such inquiry is to be conducted, the power of summoning before him or them any party or witnesses, and of requiring them to give evidence on oath orally or in writing (or on solemn affirmation if they be parties entitled to affirm in civil matters), and to produce such documents and things as such person or persons deem requisite to the full investigation of the matters into which he or they are appointed to examine.

Commissioners of Public Charities to have such powers, &c. 2. The Board of Commissioners, known and designated as "The Commissioners of Public Charities," and any one of such commissioners shall have, by law, at all times, the power mentioned in the foregoing section; and the Governor may by Order-in-Council, and whenever he deems it advisable in the interest of the public service, confer the

same power upon any other board, body or person, demand- CHAP. 120.  
ing the same for the purpose of any inquiry requiring to  
be made by such board, body or person.

3. The power thus conferred by law or by the Governor-in-Council in virtue of either of the preceding sections, shall carry with it the same power to enforce the attendance of such witnesses and to compel them to give evidence, as is vested in any court of law in civil cases; but no such party or witness shall be compelled to answer any question, by his answer to which he might render himself liable to a criminal prosecution or which he would not be compelled to answer in a court of common law, or to produce any papers or documents which he would not be required to produce in such court. <sup>Effect of such powers.</sup>

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## TITLE XXVI.

OF CERTAIN PROCEEDINGS RELATING TO  
REAL PROPERTY.

## CHAPTER 121.

## OF THE WRIT OF DOWER.

When widow  
may sue for  
dower.

1. When the heir or other person having the freehold shall not, within one month next after demand made, assign to the widow her reasonable dower, she may sue for and recover the same by writ of dower.

Form of writ of  
dower.

2. The writ of dower shall be in the form in the Schedule number One or to the like effect.

Order on absent  
defendants and  
its effect.

3. Whenever it shall be made to appear by affidavit to the satisfaction of the court or a judge that the heir or other person having the freehold is absent from the Province, so that a demand and personal service cannot be effected on him, or that he is remaining abroad to evade service, and that after due diligence and enquiry he has failed to discover any agent of the defendant within the Province, the court or a judge may make an order for the defendant to appear and plead on a certain day to be therein named, which order shall be published in the *Royal Gazette* newspaper, and in one newspaper, if any, in the county in which the freeholder lives; or in such other way and for such time as the court or a judge shall direct, and the publication of such order shall be deemed good service on such defendant, and the plaintiff shall be at liberty to proceed in the action as if the defendant had been personally served with a demand and process.

Damages for  
withholding  
dower.

4. Upon judgment being given for the widow, reasonable damages shall be assigned to her from the time of the demand made.

Form of writ  
seisin.

5. The writ of seisin thereon shall be in the form in the Schedule number Two, or to the like effect.

Dower, how set  
off.

6. The officer to whom the writ is directed shall cause the dower to be set off by five freeholders of the neighborhood, three of whom at least shall concur, who shall be

sworn before a justice of the peace to set forth the same CHAP. 121.  
impartially, without favor or affection, and as conveniently  
as may be.

7. Where no division can be made by metes or bounds, Endowment where property is indivisible.  
the widow shall be endowed in a special manner as of a  
third part of the rents or otherwise.

8. A woman endowed of lands shall not commit or Waste not to be committed or suffered.  
suffer waste thereon, but shall maintain the buildings with  
the fences and appurtenances in good repair, during her  
term.

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SCHEDULES.

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No. 1.

*Writ of Dower.*

\_\_\_\_\_, SS. .

VICTORIA, by the Grace of God, &c.

To the Sheriff of \_\_\_\_\_ :

Command A. B., of \_\_\_\_\_ in the said County, that he  
forthwith render to C. D., who was the wife of E. D., late  
of \_\_\_\_\_, deceased, her reasonable dower to which she  
claims to be entitled, of a certain messuage or tenement,  
with the appurtenances, in the possession of the said A. B.,  
situate at \_\_\_\_\_, aforesaid, and described as follows:  
*(describe the property with reasonable certainty,)* which  
was in the seisin and possession of her said husband E. D.,  
and whereof he was seised in his demesne as of fee during  
the coverture, and whereof she has nothing (as she says)  
and the said C. D. complains that the said A. B. has  
deforced her thereof. And unless the said A. B. shall do  
so, then summon the said A. B. to appear in our Supreme  
Court at \_\_\_\_\_, within \_\_\_\_\_ days after the service on  
him of this writ, then and there to show cause why he  
does not render to the said C. D. her reasonable dower as  
aforesaid.

Whereof fail not, and make due return of this writ into  
our said Supreme Court at \_\_\_\_\_.

Issued this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

G. H., Prothonotary.

J. K., Plaintiff's Attorney.



CHAP. 121.

No. 2.

*Writ of Seisin.*

———, SS.

VICTORIA, by the Grace of God, &amp;c.

To the Sheriff of the County of —— :

Whereas C. D., widow, who was the wife of E. D., late of ——, deceased, before our Justices of our Supreme Court at ——, on the —— day of ——, A. D. 18—, did recover her seisin against A. B., of ——, of one third part of a certain messuage or tenement, with the appurtenances, in the possession of the said A. B., situate at ——, aforesaid, and described as follows: (*describe the property with reasonable certainty*) as her dower of the endowment of the said E. D., her husband, by our writ of dower, whereof she has nothing: Therefore we command you that you cause to be had without delay to the said C. D. full seisin of one third part of the aforesaid messuage or tenement with the appurtenances, to hold to her in severalty by metes and bounds. We command you also, that of the goods or chattels of the said A. B. within your precinct, you cause to be paid and satisfied unto the said C. D., at the value thereof in money, the sum of —— for damages awarded her by our said court for her being held and kept out of her dower, and for costs expended on this suit, with —— more for this writ; and thereof also to satisfy yourself your own fees. And for want of goods, or chattels of the said A. B., to be by him shown unto you, or found within your precinct, to satisfy the same, we command you to take his body and commit him to the keeper of our gaol in ——, in the county aforesaid, within the said prison: Whom we likewise command to receive the said A. B. and him safely to keep, until he pay unto the said C. D. the full sum above mentioned, and also satisfy your fees. Hereof fail not, and make return of this writ, and how you shall have executed the same, unto our said Supreme Court at ——, within —— days from the date hereof.

Issued this —— day of ——, A. D. 18—.

G. H., Prothonotary.

J. K., Plaintiff's Attorney.

NOTE.—*Where no damages are awarded, the writ shall run only for seisin and costs of suit.*

## CHAPTER 122.

## OF THE PARTITION OF LANDS.

1. All persons holding lands as joint tenants, coparceners or tenants in common, may be compelled to divide the same, either by writ of partition at the common law, or in the manner provided in this Chapter. Partition may be enforced.

2. Any one or more of the persons so holding lands may apply, by petition to the Supreme Court for the county where the lands lie, for a partition of the same; and such court may cause partition to be made accordingly; and the shares of the petitioners shall be set off and assigned to them, and the residue of the premises shall remain for the persons entitled thereto, subject to a future partition among them if there is more than one person so entitled. Proceedings to be commenced by petition to Supreme Court.

3. Such petition may be maintained by any person who has an estate in possession, but not by one who is entitled only to a remainder or reversion. Petition, by whom maintained.

4. No tenant for any term of years, unless twenty years thereof at the least remain unexpired, shall maintain such a petition against any tenant of the freehold; but when two or more persons hold jointly or in common, as tenants for any term of years, either of them may have his share set off and divided from the others in the same manner as if they had all been tenants of the freehold. Who may maintain petition.

5. Such partition between two or more tenants for years shall continue in force only so long as their estates endure, and shall not affect the premises when they revert to the respective landlords or revisioners. Duration of partition as between tenants for years.

6. Every petition for a partition shall set forth the rights and titles, so far as known to the petitioner, of all persons interested in the premises who would be bound by the petition, whether they have an estate of inheritance, or for life, or years, or whether it be an estate in possession or in remainder or reversion; and whether vested or contingent; and if the petitioner holds an estate for life or years, the person entitled to the remainder or reversion after his estate shall be considered as one of the persons so interested, and shall be entitled to notice accordingly. Such petition or any subsequent proceedings had thereon may be amended at any time upon such terms as the court or a judge may impose. Contents of petition. Amendments allowed at any stage.

## CHAP. 122.

7. The petition shall be filed in the same manner as a declaration; and a summons to appear and answer thereto shall be sealed by the prothonotary; and a copy thereof with a copy of such petition, accompanied by the usual notices, shall be served on each of the parties named in the petition as interested in the premises, if they shall be found within the Province, the like number of days as required in ordinary writs.

Proceedings where some parties are absent, &c.

8. If any of the persons so named as interested are absent from the Province, or if there are persons interested in the premises, and who would be bound by the partition whose names are unknown to the petitioner, the court or a judge thereof shall order notice to be given to the persons interested who are so absent or unknown, by a publication of the petition or of the substance thereof, with the order of the court or a judge thereon, in one or more newspapers to be designated in the order, or by delivering to such absent party an attested copy of the petition and order, or in such other manner as such court or judge shall consider to be most proper and effectual.

Where a party fails to appear, Court may order further notice.

9. If any person entitled to notice shall fail to appear, and if the service of the summons or other notice to him shall appear to the court to have been insufficient, the court or a judge may order such further notice as shall be thought proper.

Proceedings, where party out of Province, has not had opportunity of appearing.

10. If in any stage of the proceedings it shall appear to the court that any person interested, whether named in the petition or not, is out of the Province, and has not had opportunity to appear and answer to the suit, it shall be continued until sufficient time has been allowed to enable him to appear and answer thereto.

Guardians, may be appointed.

11. The court or a judge may assign a guardian for the suit for any infant or insane person who is interested in the premises, in the same manner as a guardian is admitted for an infant plaintiff or defendant at common law.

Defendants may appear jointly or separately; pleadings, &c., in other

12. Any person interested in the premises of which partition is prayed for, may appear and answer to the petition, and may plead either separately or jointly with any other defendants, any matter tending to show that the petitioner ought not to have partition as prayed for, either in whole or in part; and the replication and further pleadings shall be conducted as in other actions until issue is joined, which shall be tried and determined as in other cases; all such pleadings to be filed and served in the same way as the pleadings in declaration suits, and notices of trial to be given in like manner.

13. If any person who is not named in the petition shall appear and plead as a defendant, the petitioner may reply that such person has no estate or interest in the lands described in the petition, and may pray judgment if he shall be admitted to object to the petition; and the petitioner may in the same replication plead over in answer to such plea any other matter in like manner as he might have done if he had not disputed the defendant's right to appear.

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Replication, where a party's right to appear and defend is contested.

14. If upon any such replication it shall appear that the defendant has no estate or interest in the lands, the matter of his plea or objection shall be no further inquired of.

Proceedings thereon.

15. If upon the trial of any issue of law or of fact it shall appear that the petitioner is entitled to have partition as prayed for, he shall recover his costs of such trial against the party who objected thereto, and shall have execution therefor in the usual form; but if such issue is found or decided against him, in whole or in part, the adverse party shall recover against him the costs of the trial, and shall have execution accordingly; and judgment may notwithstanding be entered for the petitioner to have partition, and to have assigned to him such part of the premises, if any, as he shall be entitled to.

Costs of trial, how regulated.

16. If the defendant shall make default, or if upon such trial it shall appear that the petitioner is entitled to have partition, whether for the share or proportion claimed in his petition or for a less share, a rule that partition shall be made shall pass; but the Court shall have the same power of setting aside defaults and of granting new trials as in other cases.

Proceedings in cases of default; rule for partition thereon.

17. When such rule shall have passed, the Court shall appoint three disinterested persons as commissioners, to make partition and to set off to the petitioners the shares belonging to them, which shall be expressed in the rule in that behalf.

Commissioners appointed to make partition under rule.

18. If there are several petitioners they may have their shares set off together, or the share of each one may be set off in severalty, at their election.

Petitioners may have shares set off jointly or separately.

19. The commissioners, before proceeding to the execution of their duties, shall be sworn before any justice, faithfully and impartially to perform the same; a certificate of which oath shall be made on the warrant by the person who administered it.

Commissioners, how sworn.

20. The commissioners shall give sufficient notice of the time and place appointed for making the partition to all persons interested therein, who are known and within the Province, that they may be present if they see fit.

Commissioners to give notice of time and place of partition.

## CHAP. 122.

Three Commissioners to meet; acts of two valid.

Partition, how effected where premises cannot well be divided.

Same subject.

Tenant liable for misconduct where he has the exclusive occupancy.

Liabilities in case of sole occupancy by one tenant in common.

21. The three commissioners shall meet for the performance of any of their duties; but the acts of any two of them shall be valid.

22. When the premises of which partition is demanded are such as cannot be divided without damage to the owners, or when any specific part of the estate is of greater value than either party's share, and cannot be divided without damage to the owners, the whole estate or the part thereof so incapable of division may be set off to any one of the parties who will accept it, he paying or securing to any one or more of the others, such sums of money as the commissioners shall award, to make the partition just and equal. But the partition in such case shall not be established by the court until all the sums so awarded shall be paid to the parties entitled thereto, or secured to their satisfaction.

23. In the case mentioned in the preceding section, the commissioners instead of setting off the premises, or a part thereof, in the manner therein provided, may assign the exclusive occupancy and enjoyment of the whole or the part, as the case may be, to each of the parties alternately, for certain specified times, in proportion to their respective interests therein.

24. When the whole or any specific part of the premises is assigned in the manner provided in the preceding section, the person entitled for the time being to the exclusive occupancy, shall be liable to his co-tenants for any injury to the premises occasioned by his misconduct, in like manner and to the like extent as a tenant for years under a common lease without express covenants would be to his landlord; and the other tenants in common may have their remedy therefor against him by action on the case, either jointly or severally at their election.

25. Whilst any estate is in the exclusive occupancy of any co-tenant under such an assignment as before mentioned, he shall be entitled to the same remedy against any person who shall trespass upon or otherwise injure the premises as if he held the same under a lease for the same term for which they were so assigned to him; and he and all the other tenants in common shall also be entitled to recover against the wrong doer such other and further damages as they shall have sustained by the same trespass or injury, in like manner as if the premises had been leased by them for such term; and all joint damages recovered by any such tenants in common, by force of this or the preceding section, shall be apportioned and divided among them, according to their respective rights, by the court in which the judgment is recovered.

26. Where the lands to be divided are situate in different counties, the whole of such lands may be divided by one proceeding under the authority of this Chapter; and the application may be made in any one of the counties in which the lands to be divided are situate; and where the lands lie in several counties, the court shall appoint three commissioners in each county where such lands lie, to make partition of the lands lying within such county, or in the discretion of the court, shall appoint three commissioners for all the lands to be divided, wheresoever situate.

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Proceedings where lands lie in different counties.

27. Commissioners appointed under this Chapter shall in all cases make a return of their proceedings under their hands, together with their warrant, to the court; and if their proceedings are confirmed by the court, judgment shall be thereupon rendered that the partition so made be final; and the return shall then be filed, and a certified copy thereof be recorded in the registry of deeds in the county where the lands lie.

Commissioners' returns to be confirmed by Court, filed and registered.

28. The court for any sufficient reason shown may set aside the return and commit the case anew to the same or to other commissioners to be appointed, whereupon the same proceedings shall be had as above directed.

Return may be set aside and new proceedings had.

29. The final judgment confirming and establishing the partition shall be conclusive as to all rights, both of property and possession, of all parties and privies to the judgment, including all persons who might by law have appeared and answered to the petition, except as is hereinafter provided.

Final judgment, upon whom conclusive.

30. If any person who was a part owner with the petitioners, and for whom a share is left upon the partition, should be out of the Province when the summons or notice to him is served, and should not return in time to appear and answer to the suit, he may, at any time within three years after the final judgment, apply to the court for a new partition of the premises.

Part owner absent from Province may apply within three years for new partition.

31. If upon such an application, and after hearing of all parties interested therein, it shall appear to the court that the share left for the applicant was less than he was entitled to, or that the part left for him was not at the time of the partition equal in value to his share of the premises, the court may order a new partition thereof, which shall be made in the manner before provided.

Court may order a new partition.

32. In such new partition the commissioners shall not be required to make a new division of the whole premises, but they may take from any one share or shares and add to any other or others so much as shall in their judgment be necessary to make the partition just and equal, estima-

Commissioner's duty on such new partition.

**CHAP. 122.** ting the whole as in the state in which it was when first divided; or if an equal partition of the lands cannot be made without inconvenience to the owners, the commissioners may award money to be paid by one party to another as before provided, to equalize the shares.

Improvements, how considered in new partition.

33. If after the first partition, any improvement shall have been made on any part of the premises, which, by the new partition, shall be taken from the share of the party who made the improvements, he shall be entitled to compensation therefor, to be estimated and awarded by the commissioners, and to be paid by the party to whom such part of the premises shall be assigned on the new partition; and the court may order execution therefor in the usual form.

Person not appearing, who claims to hold premises in severalty, not bound by judgment.

34. If any person who has not appeared and answered to the petition for partition, shall claim to hold in severalty the premises therein mentioned, or any part thereof, he shall not be concluded by the judgment for partition, but may bring his action for the lard claimed by him against any or all of the petitioners or defendants, or of the persons holding under them as the case may require, within the same time in which he might have brought it if no such judgment for partition had been rendered.

Person not appearing but claiming share assigned to part owner, bound by partition, but may have action for share.

35. When any person who has not appeared and answered to the petition shall claim the share that was assigned to, or left for any of the supposed part owners in the judgment for partition, he shall be concluded by the judgment so far as it respects the partition and the assignment of the shares, in like manner as if he had been a party to that suit; but he shall not be prevented thereby from bringing his action for the share claimed by him against the person to whom it was assigned, or for whom it was left.

Action in such case, how and against whom brought.

36. The action in such case shall be brought against the tenant in possession in like manner as if the plaintiff had originally claimed the specific piece of land demanded, instead of an undivided part of the whole land; and it may be brought within the same time in which it might have been brought if no such judgment for partition had been rendered.

Proceedings where two persons claim same share before division.

37. If two or more persons appear as defendants claiming the same share of the premises to be divided, it shall not be necessary to decide upon their respective claims, except only for the purpose of determining which of them shall be admitted to appear and plead in the suit; and if partition is made, the share so claimed shall be left for whichever of the parties shall prove to be

entitled to it, in a suit to be thereafter brought between themselves. CHAP. 122.

38. If in such a case it shall be decided in the original suit for partition, upon the replication of the petitioners or otherwise, that either of the defendants is not entitled to the share that he claims, he shall be concluded by the judgment so far as it respects the partition and the assignment of the shares ; but he shall not be prevented thereby from bringing his action for the share claimed by him against the other claimant thereof, in the manner provided in the three preceding sections.

Defendant, against whom judgment on partition is given not precluded from subsequently contesting right of other.

39. If any person who has not appeared and answered as above shall claim any part of the premises mentioned in the petition, as a part owner with those who were parties to that suit, or any of them, and if the part or share so claimed was not known or not allowed and left for him in the process for partition, he shall be concluded by the judgment so far as it respects the partition ; but he shall not be prevented thereby from bringing an action for the share or proportion claimed by him, against each of the persons who shall hold any part of the premises under the judgment for partition.

Rights of party not appearing where share was not known or allowed, how far affected by partition judgment.

40. If the plaintiff shall prevail in the case last-mentioned, he shall not be entitled to demand a new partition of the whole premises, but he shall recover against each of the persons holding under the judgment for partition the same proportion or share of the part held by him that the plaintiff was entitled to out of the whole premises before the partition thereof.

Redress in such case, how and against whom obtained.

41. If after the making of partition it shall appear that any person for whom a share was left or to whom a share was assigned, had died before such partition was made, the heir or devisee of such deceased person shall not by reason of such heir or devisee having been a party to the suit, either as a petitioner or as a defendant, be barred from claiming the share that belonged to the deceased person ; but the heir or devisee in such case shall have the same rights and the same remedies in all respects as if such heir or devisee had not been a party to the suit, and had not notice of the pendency thereof.

Rights of heir or devisee where, after partition, it shall appear that ancestor or testator died before partition.

42. If any person to, or for whom any share shall have been assigned or left upon any judgment for partition, shall be evicted thereof, by any person, who at the time of the partition, had a title thereto paramount to the title of those who were parties to the suit for partition, the person so evicted shall be entitled to a new partition of the residue, in like manner as if the former partition had not been made.

Remedy where party evicted by person having paramount title



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Lien by mortgage, how effected by judgment.

43. Any person having a mortgage, attachment, or other lien upon the share of any part owner, shall be concluded by the judgment, so far as it respects the partition and the assignment of the shares; but his lien shall remain in full force upon the part that shall be assigned or left for such part owner.

Suit not to abate for death of party.

44. In the case of the death of any party in a petition for partition, the suit need not abate, but may be conducted and prosecuted to final judgment, under such rules and orders for bringing in the heirs or representatives of the deceased party as the court or judge may think proper for making them parties to the suit, and regulating the proceedings accordingly.

Expenses of Commissioners to be allowed and costs to be taxed as in other cases.

45. The expenses and charges of the commissioners shall be ascertained and allowed by the court, and all the other costs of the proceedings shall be taxed in the usual manner; and the whole shall be paid by the parties in proportion to their respective shares or interests in the premises; except only the cost of a trial of any issue joined in the case, as to which a different provision is before made.

Titles - under judgment in partition, how considered.

46. Every person holding any lands under a partition made by virtue of this Chapter shall be considered as holding them under an apparently good title, so that in case of eviction he shall be entitled to compensation for any improvements made thereon.

Proceedings, how taken and before whom; exception; appeal.

47. All necessary rules or orders in proceedings connected with the partition of lands under this Chapter may be granted by the Supreme Court, or by a judge thereof at chambers, except where the trial of an issue before a jury shall become necessary; and all orders required by this Chapter, to be made by the court, may be made by a judge, subject to an appeal from any such order to the court at its next sittings in the county.

Order of a single judge, liable to be rescinded or altered.

48. Every order made in pursuance of this Chapter by a single judge, not sitting in open court, shall be liable to be rescinded or altered by the court in like manner as other orders.

When real estate is sought to be divided and heirs either decline to accept estate or portion thereof, or are incapable of doing so, from minority, &c., judge may order sale at public auction.

49. Whenever any real estate is sought to be divided, either in a case of intestacy or under a will amongst the parties entitled to share therein, or among tenants in common under the authority of the Supreme Court in proceedings in partition, and such real estate or any part thereof owing to any cause cannot be actually divided by metes and bounds without detriment and disadvantage to the parties entitled thereto; in case the heirs or other parties interested in such division shall decline to accept such estate or portion thereof offered to them, or shall by

absence, incapacity, or minority be prevented from accept- CHAP. 123.  
 ing such estate or parcel thereof, any judge of the Supreme  
 Court may order that such real estate or parcel thereof  
 shall be sold at public auction on such notice and in such  
 manner as such judge may direct, and the net proceeds of  
 such sale shall be divisible among the parties entitled to said  
 estate. And such judge shall have power to direct a deed  
 thereof to be executed, by which the purchaser shall have  
 all the title of the several heirs or parties represented in  
 such proceedings or suit in partition; and the judge on  
 such order may direct that such sale shall be made and the  
 deed executed by the sheriff of the county where the lands  
 lie, who shall receive the sum of five dollars for making the  
 sale, executing the deed, and paying over the money, in  
 lieu of all poundage.

Net proceeds  
 divided amongst  
 parties interest-  
 ed.  
 Judge may direct  
 deed to be exec-  
 uted passing  
 title.

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## CHAPTER 123.

### OF THE SALE OF LANDS UNDER FORECLOSURE OF MORTGAGE.

1. When actions of ejectment by a mortgagee or  
 actions on bonds or notes secured by mortgage, or on any  
 covenant in the mortgage, are brought in the Supreme  
 Court, and no suit touching the same matter is pending in  
 the court, the person having the right of redemption, on  
 appearing as defendant, may pay to the plaintiff or bring  
 into court the amount due with costs; and thereupon the  
 court by a rule may compel the plaintiff to re-convey to  
 such defendant the land mortgaged, and deliver up all  
 writings in his custody relating thereto.

In actions for  
 money secured  
 by mortgage,  
 defendant may  
 pay into court  
 and have a re-  
 conveyance.

2. In case such mortgagor, or any one of several of  
 such mortgagors, be an absent or absconding debtor, a  
 declaration in ejectment or other process may be served  
 upon the tenant, if any, in possession of the lands, and  
 upon any of such defendants who shall not be absent or  
 absconding, and a copy thereof shall also be left at the last  
 place of abode of any of the defendants who may be  
 absent or absconding; and such service if made the usual  
 time limited by law for service of process, shall be sufficient  
 to give jurisdiction to the court, and the plaintiff may  
 proceed to final judgment and sale of the lands as herein-  
 after mentioned; but before such declaration shall be  
 served the same affidavit shall be made and filed in the  
 office of the prothonotary of the county where the declara-  
 tion is returnable, as is necessary in ordinary cases of  
 proceeding against absent or absconding debtors. In cases

Proceedings,  
 where one or  
 more of mort-  
 gagors absent,  
 may be as in  
 cases of absent  
 debtors.

CHAP. 123. under this section it shall not be necessary to wait two terms before going to trial, as in other cases against absent or absconding debtors.

Notice to be given to such parties as in Chancery would be defendants.

3. In case any persons beside the mortgagor are interested in the lands who would require to be made defendants, if proceedings were had in Chancery, then, in addition to the service of process upon the defendant, or proceedings in the second section mentioned where he is an absent or absconding debtor, a notice in writing shall be served on all such persons, their attorneys or agents, specifying the proceedings that have been or are about to be taken, and requiring them to appear at the Supreme Court to protect their interests; which notice shall be served the same length of time as is required in notices of trial.

Sale of mortgaged premises.

4. In case the defendant shall neglect to pay the amount found due to the plaintiff by the court, with costs, the court may order the lands mortgaged to be advertised by handbills in the county for at least thirty days, and thereafter to be sold at public auction by the sheriff of the county wherein the lands lie.

Re-hearing provided where defendant is an absent debtor.

5. In case the defendant shall be an absent or absconding debtor he shall be entitled to a re-hearing at any time within three years after judgment; and the plaintiff, upon obtaining a rule for the sale of the mortgaged lands, shall give security for the re-payment of the sums levied, if judgment shall be reversed on such re-hearing.

Sheriff's deed; its effect.

6. The deed shall be executed and delivered by the sheriff to the purchaser, or his agent or nominee, and shall be taken as presumptive evidence of the requisitions of this Chapter having been complied with, and on being recorded in the books of registry for the county in which the lands lie, shall be sufficient to convey all the estate and interest of the mortgagor in the lands therein described; and the court may award a writ of possession upon judgment being had.

Writ of possession may issue.

Proceeds of sale, how applied.

7. The sheriff shall, out of the proceeds of the sale, pay to the plaintiff the sum due to him, and shall pay over the residue, if any, to such person as the court shall direct.

Powers of Supreme Court to adjust equities.

8. The Supreme Court shall have the same powers as were possessed by the Court of Chancery in reference to the proceedings in such suits, and for the equitable adjustment of the rights of the different parties interested.

One judge to have power of court.

9. The powers hereby conferred upon the court may be exercised by a single judge thereof, except where the trial of an issue before a jury may become necessary, subject to an appeal from any order of the judge to the court at its next term in the county.

Exception.

10. The court or a judge on being satisfied by affidavit CHAP. 124.  
 setting forth that a sale had been duly made, the name and Deed, how exe-  
 place of residence of the highest bidder, the fact of the death, cutted, &c  
 resignation or removal from office of the sheriff, who had  
 sold the lands, and the name of his successor, or the sheriff  
 in office at the time of the application, may order the then  
 sheriff to execute and deliver such deed, and which said  
 deed, when executed by said successor, or the sheriff in  
 office at the time of making such order, shall have the  
 same force and effect as if executed by the sheriff by  
 whom the lands were sold.

In case of the death, resignation, or removal of any Death of Sheriff  
 sheriff, after he has made a sale of lands under the pro- after sale and be-  
 visions of this Chapter, but before he has made the deed fore execution of  
 or conveyance of the same to the purchaser, the deed deed.  
 or conveyance may be made to the purchaser by the successor  
 of the sheriff so having died, resigned, or been removed.

11. This Chapter shall apply to causes in which sales Application of  
 under foreclosure have already been made, but the deeds Chapter.  
 not executed and delivered.

12. Whenever any mortgaged land is situate in Sale of land situ-  
 adjoining counties, with the county line running through ats in adjoining  
 the same, the sheriff of either of the said counties may counties.  
 proceed to sell the same under an order for the foreclosure  
 of said mortgage and sale of said land, and under the  
 provisions of this Chapter, and the sheriff shall deliver to  
 the purchaser a deed of such lands, and any deed hereto-  
 fore executed by the sheriff of either of said counties  
 shall be valid and effectual.

13. On any sale of mortgaged premises under the Mortgagee may  
 provisions of this Chapter, it is hereby declared and purchase  
 enacted that it has been and shall be lawful for the  
 mortgagee to purchase.

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## CHAPTER 124.

### OF THE SALE OF LANDS UNDER EXECUTION.

1. Any judgment recovered in the Supreme or County Judgments,  
 Courts, any final decree of the Supreme Court, in any when to bind  
 matter or suit requiring payment of money by either real estate.  
 party, shall bind the real estate of the debtor from the time  
 such judgment or decree shall be recorded in the books of  
 registry for the county or district wherein such real estate  
 is situate, and the release from a judgment or decree of

**CHAP. 124.** part of any lands or hereditaments charged therewith, shall not affect the validity of the judgment or decree as to the lands or hereditaments remaining unreleased, or as to any other property not specifically released, without prejudice nevertheless to the rights of all persons interested in the lands, hereditaments, or property remaining unreleased, and not concurring in or confirming the release, provided that no lands shall be levied upon until one year after the registry of the judgment or decree as aforesaid.

Death of defendant before or after judgment, and no executors, &c., appointed.

2. In case of the death of a defendant before or after judgment has been recorded in the books of registry, as mentioned in the first section of this Chapter, and no executors or administrators have been appointed to administer his estate, the plaintiff or his personal representatives shall be at liberty to suggest said death, and to issue execution on said judgment in the names of the original parties, against said land, and sell the same under the provisions of this Chapter.

Interest of mortgagor may be levied on.

3. The interest of any mortgagor of real estate may be seized or taken in execution, sold and conveyed in like manner as any other real estate may be seized or taken in execution, sold and conveyed.

Sale under execution of mortgaged lands to place purchaser in position of mortgagor at time of judgment, &c.

4. The effect of such seizure or taking in execution, sale and conveyance of any such mortgaged lands and tenements shall be to vest in the purchaser, his heirs and assigns, all the interest of the mortgagor therein at the time the judgment was recorded as well as at the time of such sale, and to vest in such purchaser, his heirs and assigns, the same rights as such mortgagor would have had if such sale had not taken place; and the purchaser, his heirs and assigns may pay, remove or satisfy any mortgage, charge or lien which at the time of recording the judgment existed upon the lands or tenements so sold in like manner as the mortgagor might have done; and thereupon the purchaser, his heirs and assigns shall acquire the same estate, right and title as the mortgagor would have acquired in case the payment, removal or satisfaction had been effected by the mortgagor; and on payment of the mortgage money to the mortgagee by the purchaser, his heirs, or assigns, the mortgagee, his heirs and assigns shall, if required, give to such purchaser, his heirs and assigns, at his or their charge, a certificate of payment or satisfaction of such mortgage, which certificate may be in the following form, that is to say:

Certificate to be given by mortgagee to purchaser paying off mortgage.

To the Registrar of the County of \_\_\_\_\_:

I, A. B., of \_\_\_\_\_, do certify that C. D., of \_\_\_\_\_, who has become the purchaser of the interest of E. F., of \_\_\_\_\_, has satisfied all money due upon a certain mortgage made

by the said E. F. to me (*or as the case may be*), bearing CHAP. 124.  
 date the — day of —, one thousand eight hundred  
 and —, and registered at —, on the — day of  
 —, in the year — in Libro —, Folio —, and  
 that such mortgage is therefore discharged. As witness  
 my hand this — day of —, one thousand eight  
 hundred and —.

(Signed) A. B.

Witness, E. H.

And such certificate shall be of the like effect as a Effect of certi-  
cate.  
 release executed by the mortgagee, or his representatives  
 or assigns, to the mortgagor, his heirs, executors, adminis-  
 trators or assigns.

5. Any mortgagee of lands and tenements so sold, or Mortgagee may  
buy at such  
sales.  
 the heirs or assigns of such mortgagee, may be the pur-  
 chaser at such sale, and shall acquire the same estate  
 interest and rights thereby as any other purchaser.

6. A judgment recorded shall bind the interest of any Interest of any  
party or corpo-  
ration held in  
trust may be  
sold under exe-  
cution.  
 party or corporation beneficially interested in lands held in  
 trust for him, or for said corporation, and the same may be  
 taken in execution for the payment of his debts, or the  
 debts of said corporation, in the same manner as if the said  
 party or corporation were seised or possessed of such lands.

7. Execution as against lands may issue at any time Execution with-  
in six years after  
judgment.  
 within six years from the signing of the judgment, with-  
 out a *scire facias* or leave of the court.

8. The judgment creditor and party entitled to pay- Judgment credi-  
tor or party en-  
titled to pay-  
ment under final  
decree may levy  
on whole or por-  
tion of real estate  
 ment under a final decree of the Supreme Court, may  
 order execution to be levied on the whole or any por-  
 tion of the real estate lying within any county or district  
 where the judgment or decree is registered, as provided in  
 the first section.

9. Where a judgment or decree has been so registered After a year,  
subsequent judg-  
ment creditor  
may compel levy.  
 for the period of one year, and no levy has been made on  
 the real estate bound thereby, any judgment creditor, or  
 party entitled under any such decree, whose judgment or  
 decree has been subsequently registered, may by a written  
 notice require the prior judgment creditor or creditors, or  
 prior party or parties entitled under such decree, to levy on  
 and proceed to sell the real estate within three months from  
 the service of such notice.

10. If none of the prior judgment creditors, or the If no levy, prior  
creditor loses  
preference.  
 prior parties entitled under such decree, shall levy and take  
 effective steps to sell such real estate, within said period of  
 three months from the service of such notice, the party  
 giving the notice shall acquire a preference over the judg-  
 ment creditor or creditors, or party or parties entitled under  
 such decree, upon whom such notice has been served.

## CHAP. 124.

Lands to be levied on without appraisement, and advertised thirty days in *Gazette*, &c.

Contents of advertisement.

After twenty days' advertisement by hand-bills, sheriff shall sell to highest bidder.

Execution debtor may by notice require any particular part of land to be sold first.

Sheriff's deed, its effect.

In case of death of sheriff after sale and before execution of deed, successor may execute deed, or court or judge may order the then sheriff to execute and deliver deed.

Sheriff's deed presumptive evidence of transfer of defendant's title.

11. The sheriff, upon receiving such execution, shall, at the expiration of the one year, levy on such lands without appraisement, and the attorney issuing the same shall cause to be inserted for thirty days next preceding the day of sale, in the *Royal Gazette* newspaper, and also, except in the County of Halifax, in one newspaper, if any, which may be published in the county or district wherein the lands are situate, an advertisement containing a description of the lands directed to be levied on, stating that such lands have been taken in execution at the suit of the plaintiff or defendant as the case may be, the time and place fixed for such sale, and having appended thereto the names of the sheriff and the attorney of the party issuing such execution.

12. The sheriff, after copies of such advertisement have been posted up in the most public places of the township or settlement wherein the lands lie, for at least twenty days previous to the time appointed for the sale, shall proceed to sell the same at public auction to the highest bidder.

13. If the execution debtor by notice in writing delivered to the sheriff at least ten days previously to the sale, requires that certain portions of the land so advertised be first sold, the sheriff shall cause the same to be first put up for sale, and if a sufficient sum shall be realized therefrom to satisfy the execution, interest and expenses, no other part of such lands shall be sold; otherwise he shall proceed with the sale of the remainder.

14. The sheriff shall deliver to the purchaser, or his agent or nominee, a deed of such lands, which shall be sufficient to convey to the purchaser all the interest of the execution debtor in the lands therein described, whether situate in his bailiwick or in an adjacent county as hereinafter mentioned, subject to prior incumbrances. And if the sheriff die or otherwise vacate his office after he has made a sale under the provisions of this Chapter, but before the execution and delivery of the deed, his successor may execute and deliver the deed to the purchaser, or the Court or a Judge on being satisfied, by affidavit setting forth that a sale had been duly made, the name and place of residence of the highest bidder, the fact of the death, resignation or removal from office of the sheriff who had sold the lands, and the name of his successor, or the sheriff in office at the time of the application, may order the then sheriff to execute and deliver such deed.

15. The sheriff's deed shall be presumptive evidence of the execution debtor's title having been thereby conveyed to the purchaser.

16. When the lands so conveyed shall be in possession of the tenants of the execution debtor, the purchaser shall become the landlord, and shall have the like rights and remedies against the tenants as the execution debtor would have had, and shall be entitled to all rents accruing after such purchase. CHAP. 124.  
Purchaser shall become landlord of tenants.

17. Where the sum realized by such sale shall be more than sufficient to satisfy the execution and necessary expenses attendant on such levy and sale, and interest on the amount of the judgment from the date thereof, the surplus shall be retained by the sheriff, to be paid to such person as may be directed by an order of the Supreme Court or any judge thereof. Surplus proceeds of sale returned by sheriff, subject to order of court.

18. In case of the bankruptcy of a plaintiff after judgment has been entered in his favor against a defendant, and an assignee has been appointed for his estate, the assignee, at any time within six years from the date of said judgment, on filing an affidavit stating the fact of said bankruptcy, that the assignee has been duly appointed, and what sum is due and payable on said judgment, shall be at liberty to suggest said bankruptcy and the appointment of the assignee, and to issue execution on said judgment, in the name of the assignee, against the defendant or defendants without further proceedings. Assignee of bankrupt plaintiff may suggest bankruptcy and his appointment, and issue execution within six years.

19. Titles to land made by any sheriff previous to the tenth day of April, one thousand eight hundred and forty-one, shall not be invalidated by any irregularity or defect in the proceedings prescribed by statute for the sale of real estate; provided the party shall have been in possession of the land one year at least before such date, and shall have paid the purchase money to the sheriff. Provisions as to titles prior to 1841.

20. Whenever any real estate bound by a judgment is situate in adjoining counties, with the county line running through the same, the sheriff of either of said counties may proceed and sell the same under an execution issued upon a judgment duly recorded in both said counties, and the sheriff shall deliver to the purchaser a deed of such lands, and any deed heretofore executed by the sheriff of either of said counties conveying any lands sold by him situate in adjoining counties shall be valid and effectual. Sale of real estate when in two counties.

21. A purchaser at sheriff's sale of real estate sold under an execution issued on a judgment duly recorded for one year, and having obtained a deed from the sheriff of said property, may apply to a judge of the court out of which the execution issued for an order *nisi* to show cause why a writ of possession shall not issue to put the said purchaser in possession. Order nisi for writ of possession.



- CHAP. 124.** 22. The said order *nisi* shall be served on the party or parties in possession of the premises described in said deed, and on the judgment debtor if he be within this Province, and his residence be known to the applicant for said rule, and in case the residence of said judgment debtor be unknown to said applicant, or in case of his death, then the service of said order shall be effected by publication in one or more newspapers, for such time as such judge shall direct in such order *nisi*.
- How served.
23. Upon the return of said order *nisi*, the judge shall hear the parties either *viva voce* or by affidavit, as he thinks best, and if he shall be of opinion that the said purchaser is entitled to the possession of said property, as against the said judgment debtor, or those claiming by, through or under him, he shall make an order absolute, directing a writ of possession to issue out of said court after a certain number of days to be named in said order.
- Return of order nisi.
24. In case the said parties shall neglect or refuse to appear on said order *nisi*, or neglect or refuse to deliver up possession of said premises within the time mentioned in said order absolute, then the sheriff shall immediately execute said writ of possession and put the said purchaser in possession of said property.
- Provision for case of non-appearance.
25. The applicant for said order *nisi* shall not be entitled to any costs unless he shall have served a demand of possession of said premises on the party or parties in possession, by leaving the same at their residence at least ten days before the application.
- Costs.
26. The word "purchaser" shall include the heirs and assigns of said purchaser, as also incorporated and joint stock companies and their assigns.
- Definition of "purchaser."
27. In any case where the sheriff may be interested, the sale under the provisions of this Chapter may be lawfully made and the deed executed by a coroner, and the latter shall in such case have all powers and perform all duties bestowed or enjoined by this Chapter upon sheriffs.
- Where sheriff interested, coroner may perform duties of.
28. The writ of possession shall be in the form hereunto annexed :
- Writ of possession.

## FORM OF WRIT OF POSSESSION.

SS. VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen.

To the Sheriff of the County of ———, or to any other of our Sheriffs:—

Whereas, A. B., is the purchaser at sheriff's sale of the property hereinafter described, and it has been adjudged

that he is entitled to the possession of (*here describe the property*), with the appurtenances. CHAP. 125.

We command you that you omit not by reason of any liberty of your county, but that you enter the same, and without delay you cause the said A. B. to have possession of the said land and premises, with the appurtenances, and that you cause to be paid and satisfied unto the said A. B. at the value thereof in money, the sum of ——— for costs hereof, and your own fees, and for want of goods and chattels, lands or tenements of the said ——— to be by ——— shown unto you or found within your precinct to the acceptance of the said A. B. to satisfy the aforesaid sums: We command you to take the body and commit unto our gaol until ——— pay the full sums above mentioned, or that he be discharged by the said A. B., the creditor, or otherwise, according to law. Whereof fail not and make due return of this writ unto our said ——— Court at ——— in thirty days from the issue hereof.

Issued this ——— day of ———, A. D., 18—.

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## CHAPTER 125.

### OF TENANCIES AND DISTRESS FOR RENT.

1. When any house or tenement is let by the year, three months' notice to quit before the expiration of the year, and when by the month one month's notice, and when by the week one week's notice, shall be given to or by the tenant in possession; and such notice shall be good, though the day on which the tenancy terminates be not named therein. Notice to quit, what to be sufficient.

2. No distress for rent shall be made unless there be an actual demise at a specific rent. No distress unless actual demise at a specific rent.

3. Where any goods are distrained for rent reserved and due upon any lease or contract, and the tenant or owner of the goods shall not within five days next after the distress taken, and notice thereof with the cause of taking served upon him, or left at the most conspicuous place on the premises charged with such rent, replevy the same with security to be given to the sheriff, the landlord, with the sheriff or his deputy or a constable, who are required to aid therein, may cause the goods so distrained to be appraised by two sworn appraisers, who shall be sworn before a justice of the peace, the sheriff, his deputy, a constable, or commissioner. Goods distrained to be appraised and sold within five days after notice, if not relieved.

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Goods may be sold on premises after five days' notice.

4. The goods so distrained may be impounded or otherwise secured in such place or on such part of the premises chargeable with the rent as shall be most fit and convenient, and the landlord may appraise, and sell, and dispose of the same on the premises, after giving five days' public notice of such sale by handbills, to be posted in at least five public places in the district in which such sale is to take place.

Goods to be sold and after rent paid, surplus to remain for owner

5. After the appraisement the landlord shall sell the goods distrained for the best price to be gotten therefor, towards payment of the rent due and expenses incurred, leaving the surplus, if any, in the hands of the officer for the owner's use.

Provisions in case superior landlord levies on goods or chattels of lodger.

6. If any superior landlord shall levy, or authorize to be levied, a distress on any furniture, goods, or chattels of any lodger for any arrears of rent due to such superior landlord by his immediate tenant, such lodger may serve such superior landlord, or the bailiff, or other person employed by him, to levy such distress, with a declaration in writing made by such lodger, setting forth that such immediate tenant has no right of property or beneficial interest in the furniture, goods, or chattels so distrained or threatened to be distrained upon, and that such furniture, goods, or chattels are the property or in the lawful possession of such lodger, and also setting out any and what rent is due, and for what period, from such lodger to his immediate landlord; and such lodger may pay to the superior landlord, or to the bailiff, or other person employed by him as aforesaid, the rent, if any, so due as last aforesaid, or so much thereof as shall be sufficient to discharge the claim of such superior landlord; and to such declaration shall be annexed a correct inventory, subscribed by the lodger, of the furniture, goods, and chattels referred to in the declaration; and if any lodger shall make or subscribe such declaration and inventory, knowing the same or either of them to be untrue in any material particular, he shall, upon summary conviction thereof before a justice, be liable to a fine of not more than fifty dollars, and in default of payment thereof to imprisonment in the county gaol for a period not exceeding six months with hard labor.

After service of declaration and inventory by lodger on superior landlord and payment of rent, if said landlord proceed, deemed guilty of illegal distress.

7. If any superior landlord, or any bailiff, or other person employed by him, after being served with the before-mentioned declaration and inventory, and after the lodger shall have paid or tendered to such superior landlord, bailiff, or other person, the rent, if any, which by the last preceding section such lodger is authorized to pay, shall levy or proceed with a distress on the furniture, goods, or

chattels of the lodger, such superior landlord, bailiff, or other person shall be deemed guilty of an illegal distress; and the lodger may apply to the County Court judge of the district wherein are the furniture, goods, and chattels so levied on, for an order for the restoration of such furniture, goods, and chattels; and such application shall be heard before the County Court judge, who shall inquire into the truth of such declaration and inventory, and shall make such order for the recovery of the furniture, goods, or chattels, or otherwise, as to him shall seem just; and the superior landlord shall also be liable to an action at law at the suit of the lodger, in which action the truth of the declaration and inventory may likewise be inquired into.

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Remedy of lodger.

8. Any payment made by any lodger by the last preceding section but one, shall be deemed a valid payment on account of any rent due from him to his immediate landlord.

Payment by lodger, when deemed valid.

9. All property brought upon or into any building used as a market *bonâ fide* for the purpose of sale by any person or persons, not being the property of the tenant (or property in which the said tenant is interested), shall be exempt from distress for rent, notwithstanding anything in this Chapter to the contrary.

When property in market exempt from distress.

10. Sheaves or cocks of grain, grain loose or in the straw, hay in a barn or upon a hovel, stack or rick, or upon the land charged with such rent, may be locked up or detained upon the premises by a landlord having rent in arrear, for or in the nature of a distress, until the same shall be replevied upon security to be given as above; and in default of being replevied within the time above in that behalf specified, after appraisement made in like manner, be sold; but the same shall not be removed out of the place where found and seized by the distrainer, to the damage of the owner, before such sale.

Grain in the straw, hay in a barn, &amp;c., how distrained.

11. Upon any pound-breach and rescue of goods distrained for rent, the person aggrieved thereby may recover his damages against the offender, or against the owner of the goods distrained if the same be afterwards found to have come to his use or possession.

Remedy in case of pound-breach and rescue of goods distrained.

12. In case any distress and sale be made by any person for rent where none is in arrear, the owner of the goods distrained, his executors and administrators may by suit recover against the persons distraining or either of them, his or their executors or administrators, the value of the goods distrained, and such further damages as the jury may award.

Remedy in case of a distress for rent when none is in arrear.

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Subsequent irregularity not to render distress unlawful.

Remedy of party aggrieved.

Proviso.

Goods not liable to be removed under attachment or execution till rent paid; but not to exceed one year's amount, &c.

Goods fraudulently removed to avoid distress may, unless previously sold in good faith, be seized within twenty-one days.

Rent reserved upon a lease for life recovered as in other cases.

Rent distrained for within six months after determination of lease in certain cases.

13. Where any distress shall be made for any kind of rent justly due, and any irregularity or unlawful act shall be afterwards done by the party distraining or by his agent, the distress itself shall not be therefore deemed to be unlawful, nor the party making it deemed a trespasser *ab initio*; but the person aggrieved by such unlawful act or irregularity may recover full satisfaction for the special damage he shall have sustained thereby, and no more: Provided, nevertheless, that no tenant or lessee shall recover in any action for any such unlawful act or irregularity as aforesaid, if tender of amends shall have been made by the person distraining or his agent before such action brought.

14. No goods being upon any messuage or tenement leased shall be liable to be taken by virtue of any attachment or execution, unless the party at whose suit the attachment or execution is sued out shall before removal of such goods from off the premises pay the landlord or his bailiff at least one year's rent thereof, if so much is in arrear and due; and if the rent be not actually due then a ratable part thereof up to the levy of the attachment or execution. If the arrears exceed one year's rent of the premises, then upon payment to the landlord or his bailiff of one year's rent, the attaching or execution creditor may proceed as in other cases; and the sheriff, his deputy or other officer is required to levy and pay to the attaching or execution creditor, as well the money so paid for rent as the amount of his execution.

15. In case any lessee of any messuage, lands or tenements, upon the demise whereof any rents are reserved, shall fraudulently or clandestinely convey from such demised premises his goods, with intent to prevent the landlord distraining the same, such landlord, by himself or his servants, may within twenty-one days then next ensuing such conveying away, seize such goods wherever found as a distress for such arrears of rent, and dispose of the same as if they had been distrained upon the premises, unless such goods shall have been sold in good faith and for a valuable consideration before such seizure, in which case they shall not be liable to a distress.

16. Rent in arrear and due upon a lease for life or lives, may be recovered by action in the same way as if reserved upon a lease for years.

17. Rent in arrear and due upon a lease for life or lives, or for years or at will, ended or determined, may be distrained for after such determination, in the same way as if such leases were not determined, if such distress be made within six months after such determination, during the continuance of the landlord's title or interest and dur-

ing the possession of the tenant from whom such arrears CHAP. 125.  
are due.

18. Executors or administrators of a landlord may Executors, &c., may distrain for rent due deceased, and in what cases. distrain upon lands demised for a term or at will, for rent due in his lifetime, and such rent may be distrained for after the determination of such term or lease at will, in the same manner as if such term or lease had not been ended or determined; but the distress in such case must be made within six months next after the determination of such term or lease and during the continuance of the possession of the tenant from whom such rent is due.

19. A landlord or his bailiff may seize as a distress for Cattle, corn, fruits, &c., taken as distress. arrears of rent any cattle or stock of his tenant feeding upon any common belonging to any part of the premises demised, and may also seize all sorts of corn, grain, grass, hops, roots, fruits, pulse or other product growing on any part of the premises demised, as a distress for arrears of rent, and may cut, gather, cure, carry and lay them up when ripe in barns or other places on the premises so demised.

20. In case there is no barn or proper place on the Such distress, how kept where no barn on premises. premises for receiving the same, then he may cause the same to be placed in any barn or proper place to be procured as near as may be to the premises, and in convenient time shall appraise and dispose of the same towards satisfaction of the rents and the charges of such distress as in other cases. The appraisement shall be made after the crop is cut, cured, and gathered, and not before.

21. Notice of the place where the goods so distrained Notice of place of such deposit, how and when given. are deposited, shall, within one week after their being so deposited, be given to the tenant or left at his last place of abode.

#### USE AND OCCUPATION.

22. Any landlord may recover in an action at law a Landlord may recover for use and occupation, what may be used as evidence of damages. reasonable satisfaction and compensation for the use and occupation of any lands and tenements by any person under any agreement not made by deed; and if any parol demise or other agreement, not being by deed, by which a certain rent is reserved, shall appear in evidence on the trial of any such action, the plaintiff shall not on that account be debarred from a recovery, but the same may be made use of as evidence of the amount of the damages to be recovered.

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## CHAPTER 126.

## OF FORCIBLE ENTRY AND DETAINER.

Warrants issued  
in case of forci-  
ble entry and  
detainer and  
party held to  
bail.

1. In cases of wrongful and forcible entry into lands, and in cases of wrongful detainer, or withholding with force after possession demanded, and also when the lessee or sub-lessee shall illegally hold possession after the determination of the lease and demand of possession, or when entry shall be made on lands or into houses or buildings, and the possession is withheld from the party entitled, for seven days after notice to leave and possession demanded, any two justices residing in the town or place wherein the lands lie, on complaint on oath being made, may by warrant cause the person so in possession to be arrested and detained in custody until he find security for his appearance to answer such complaint at the next term or sittings of the County Court in the county, and to pay the costs of the proceedings if adjudged against him; and in case he shall not find security, the cause shall notwithstanding proceed, and such complaint and all proceedings before such justices shall be forthwith filed by them in the County Court.

In what case  
warrant may  
not issue.

2. No such warrant shall issue where the party complained of or the person under whom he claims has been in quiet possession for three years next before the filing of the complaint; unless in cases of tenancy, where the same has terminated.

Exception.

Complaint to be  
summarily tried.

3. The plaintiff shall file and serve his complaint, briefly stated; and the defendant shall, within fourteen days thereafter, file and serve notice of defence, briefly stated; and the case shall be tried in a summary way in the names of the parties and as a civil suit; and if the complaint is proved to the satisfaction of the court a writ of possession shall issue, and the party complaining be put in possession of the land and premises within ten days thereafter. The court shall have power, at the same time, to award damages for such forcible entry, and in case of a tenant overholding, treble rent up to the time of the landlord's acquiring possession, at the rate previously paid; but the court may, if they think fit, order that the cause shall be tried, or the rent or damages be assessed by a jury.

Possession, when  
to be given.

Court may award  
damages or or-  
der, same to be  
assessed by jury.

## CHAPTER 127.

## OF ESCHEATING LANDS FORFEITED TO THE CROWN.

1. The Governor-in-Council may direct the Attorney-General to file inquests of office in the Supreme Court of any county where the lands lie, for revesting in the Crown lands that have been granted, but which shall have been forfeited to the Crown in whole or in part for non-fulfilment of the conditions in the grant.

Inquests of office by whom to be filed, &c.

2. A notice of the inquest, with a brief description of the lands therein, shall be published in the *Royal Gazette*, at least twice, and posted up at or near the door of the court house, and in at least five other public places in the county, during the period of one month; and if any person be living on the lands or any part thereof a copy of the notice shall also be served on him personally, or leaving the same at his last place of abode, if within the Province, and upon an affidavit filed in the court that this section has been complied with, all the right, title and interest of the grantee, or his heirs or assigns, in the lands described in said inquest shall thereupon revert in the Crown, but any person who shall have the right to traverse the inquisition shall be at liberty to come in and plead to said inquest within one year from said default upon filing an affidavit stating that it was his intention to defend said inquisition.

Notice of inquest, how given.

3. Should such appearance and plea be put in, the cause shall be tried in the same way as other causes at common law; if judgment pass for the Crown, the defendant shall be liable for the usual costs; and if the defendant succeed, his costs to be taxed in like manner and certified by the judge, shall be paid by the Commissioner of Crown Lands; but the burden of proof that the terms of said grant have not been complied with shall be upon the defendant.

Proceedings in case of appearance and plea.

Costs.

4. If any tenant shall wilfully neglect to give information of the notice to his landlord, in case he shall be within the Province, or to his known attorney, or agent, in case he shall be absent therefrom, he shall forfeit a sum not exceeding four hundred dollars, to be recovered by the party injured.

Penalty in case tenant neglects to inform landlord of notice.

5. Any number of lots within the county may be included in the same inquest, but the traverses and trials shall be separate.

Inquest may include several lots, but trial shall be separate.

6. Where one grant includes several lots, or where under one grant separate allotments are subsequently assigned to grantees or their assigns, the liability to forfeiture of each lot shall depend upon the performance of the conditions in respect of that particular lot.

Where grant includes several lots, &c., forfeiture of each, how incurred.



CHAP. 127. 7. The plea traversing the inquest shall be confined to a simple denial of the liability to forfeiture under the terms of the grant, and of this Chapter; and no other plea shall be allowed unless by special leave of a judge.

Granting of escheated lands. 8. Land so escheated shall not be granted to any person except to the original owner, his heirs or assigns, before the expiration of one year from the date of the judgment.

Parties applying for crown lands to rank according to priority of application. 9. Parties applying for grants of Crown lands shall, as respects their respective rights to the same, have precedence in the order of their respective applications; the first applicant, in order of time being held to be lawfully entitled to the same over all other applicants; and if from inadvertence or other cause a grant is issued to a subsequent applicant while a preceding legal application is outstanding, said grant shall and may, upon the filing of an inquest under this Chapter, be declared void and of no effect; and the party entitled to a grant of said lands hereunder shall receive the same, unless it be deemed necessary or advisable to refuse to issue a grant thereof to any person or persons whomsoever.

An application book to be kept. 10. An application book shall be kept in the office of the Commissioner of Crown Lands, in which shall be entered all applications for Crown lands in the order in which they may be made. Such entry shall specify the name of the applicant and his residence; the date of such application and the amount of money paid into the office by him.

## TITLE XXVII.

## CHAPTER 128.

## OF COSTS AND FEES.

1. Fees for the services mentioned in the schedule to this Chapter shall be as therein prescribed. Fees to be as in schedule.

2. Any person taking greater fees shall, for each offence, forfeit to the party aggrieved forty dollars; which sum, with such excessive fees, may be recovered by him in an action for debt. Penalty for taking excessive fees.

3. Actions for such forfeitures shall be brought in the county where the offence was committed, and within six months next after the date of such offence. Actions for penalties, where brought; limitation.

4. The prothonotary of the Supreme Court and the clerk of the County Court shall examine and compare all bills of costs of the attorneys of the respective courts, and shall mark in the margin of said bill over against the items the amount charged in the bill in excess of the amount allowed by this Chapter for the same; he shall count all pleadings, affidavits and documents and endorse thereon the number of the folios and the amount, and shall initial the bill before it shall be presented to the judge to be taxed, allowed and signed by him. Prothonotary and clerks of County Courts to examine and compare bills of costs.

5. Every prothonotary and clerk of the County Court shall, whenever required, furnish to the attorneys or parties requiring the same, a bill of the items of his own, the crier's and constable's fees, on penalty of twenty dollars; and nothing shall be taxed for such fees if the demand be made and not complied with before taxation of the costs in the cause. Prothonotary and Clerk of County Court to furnish bill of items, when required.

## SCHEDULE.

*Fees to be taken at the Provincial Secretary's Office, and paid into the Treasury.*

Each certificate, under the hand of the Governor and the Great Seal of the Province, four dollars.

Each certificate, under the hand of the Governor and the seal at arms, two dollars.

Each certificate, under the hand and seal of the Provincial Secretary, one dollar.

CHAP. 128. For registering diploma.....	\$4 00
" commission for sheriff.....	2 00
"         "         coroner.....	5 00
"         "         notary and tabellion public. . . .	10 00
" copies of any papers in the secretary's office, per folio.....	10
" searching books or documents in the secretary's office.....	25
" commission for Judge of Probate.....	10 00
"         "         prothonotary.....	10 00
"         "         registrar of deeds.....	10 00
"         "         "         probate.....	10 00
"         "         deputy surveyor of Crown lands.	5 00
"         "         persons appointed commissioners abroad under chapter "Of Witnesses and Evidence" ..	5 00
"         "         justices of the peace.....	5 00
"         "         master in Supreme Court.....	5 00
"         "         Queen's counsel.....	30 00
The fees to be charged and payable on each marriage license shall be.....	4 00

*Prothonotary's Fees.*

Entering action, filing oath, warrant or præcipe....	50
Sealing and signing every writ, execution, or other process.....	20
Filing every writ, and entering return.....	10
Filing declaration and all other pleadings.....	10
Entering appearance.....	30
Entering and filing every rule of court.....	10
Copy of every rule when given by prothonotary..	10
For drawing and striking a special jury, and for copies of the lists furnished to the respective parties and all other services connected therewith.....	2 00
Entering cause on docket ; including attendance at all chambers.....	30
Swearing and impannelling jury.....	20
Swearing each witness or constable.....	10
Taking and entering verdict.....	20
Entering judgment.....	40
The prothonotary at Halifax, for the entry of a judgment not belonging to the Supreme Court at Halifax, and for the transcript thereof.....	50
Filing retraxit or discontinuance.....	10
Copies of all papers, per folio.....	10
Every exhibit in a cause filed in court .....	06
Taking affidavit in court.....	20

Filing affidavit.....	\$ 10	CHAP. 128.
Searching records.....	10	
Entering every default.....	10	
Drawing and taking every recognizance.....	20	
Entering every non-suit.....	10	
Sealing and signing every subpœna.....	20	
Every ticket.....	10	
Continuance of every cause.....	20	
Filing the roll in every cause.....	20	
Taxing bill of costs.....	20	
Copy of docket and certificate of judgment.....	50	
Certificate of discharge of judgment.....	20	
In judgments on undefended declaration cases, by confession or default.....	2 50	
In judgments on undefended foreclosure cases....	3 50	

*In Summary and Appeal Suits.*

Signing and sealing writs.....	50
For all other services, including final judgment, when not tried by a jury.....	50
For every alias summary writ and præcipe.....	40

*In Sub-summary Suits.*

Signing and sealing writ.....	20
Signing judgment.....	30
Every subpœna or ticket.....	10

No commission shall be allowed or deducted from money paid into court under any rule or plea.

*Commissioner's Fees.*

For administering oath.....	20
For marking writ.....	20
Taking depositions of witnesses, each witness....	1 00
And for taking depositions, per folio.....	10
Travelling fees, when necessary, per mile.....	05

*Sheriff's Fees.*

Serving summons and making return thereof.....	70
Serving every other writ of mesne process or <i>scire facias</i> , and making return thereof.....	1 00
Serving every execution and making return thereof	1 00
Returning every execution where the same has not been served.....	30

<u>CHAP. 128.</u> Serving every writ of possession and making return thereof.....	\$3 00
Travel per mile from the place of residence of the sheriff to the place where he shall serve a writ.....	10

Where the sheriff shall serve any writ returnable out of his county he shall be entitled to charge and receive one dollar extra for returning such writ.

Every bail bond.....	\$ 60
Summoning a jury in each cause.....	50
Executing writ of inquiry, summoning jury, and making return.....	2 00
Returning every special jury.....	3 00

On execution or attachment where a sale shall take place extended on personal property, sale and payment of the money to the party or his attorney, as follows:—

For any sum not exceeding \$200, five cents in the dollar.

From \$200 to \$400 four cents in the dollar.

For all above \$400, two and a half cents in the dollar.

In cases where there shall be no sale, one-half the above fees on actual payment of the money.

For making inventory of goods attached, such reasonable fees as shall be taxed by the court out of which the writ shall have issued

For certifying copy of attachment levied on real estate and making and delivering to the registrar of deeds copy of the appraisement of the real estate.....

\$1 00

On the sale of all real estate, whether by virtue of an execution or attachment, or by virtue of any rule or order, and payment of the proceeds to party or his attorney, two and a half cents in the dollar.

Every deed.....

2 00

Bringing up prisoner by *habeas corpus*.....

1 00

Attending prisoner before judge on any special occasion.....

75

For every member returned duly elected to serve in general assembly, to be paid out of the treasury in lieu of all other expenses chargeable upon the treasury.....

6 00

For summoning the grand and petit juries, a sum not exceeding \$20 for both juries, if allowed by the grand jury and approved by the sessions.

For attending on the terms and sittings of the Supreme and County Courts, not exceeding \$1.50 for each day's attendance, while said courts are actually sitting.

*Appraiser's Fees.*

For appraising goods or real estate taken under attachment, each appraiser.....	\$	50
When property is extensive and complicated, for each day actually employed, each appraiser		70

*Juror's Fees.*

Petit and special jurors, per day.....	1	00
Travel per mile from place of residence to court house.....		10

*Witness' Fees.*

For attendance, per day.....	50
Travel per mile, coming and going.....	05

To be the same in every court.

Plaintiff or defendant no witness fees except where called by the opposite party.

*Crier's Fees.*

For every default on non-suit.....	07
" calling jury in each cause.....	10
" every verdict.....	07
" swearing every witness.....	05
" discharging a party by proclamation.....	10
On every bill of costs taxed in the country.....	10
" " " Halifax.....	20

*Constable's Fees in Supreme Court.*

Attending jury in each cause.....	20
Serving every warrant or summons.....	20
Summoning a jury by warrant from coroner, and attendance per day.....	50
Travel per mile the same as sheriff.	

*Coroner's Fees.*

For every inquisition, including \$2.50 for fees of jury and 50 cents for fee of constable, to be paid by the Province.....	10	00
Any extraordinary and necessary expense attending the inquest or burial of a deceased person, if approved of by the grand jury and municipal council, to be a municipal charge.		
The same fees as a sheriff in cases where he discharges the duties of a sheriff.		

CHAP. 128.

*Arbitrator's Fees under a Rule of Court.*

Reasonable fees to be taxed.

*Medical Practitioner's Fees.*

For attendance and evidence before coroner, including *post mortem* examination . . . . . \$5 00

*Master's Fees.*

Every attendance on a reference, shown to have been necessary by affidavit, and approved of by the judge . . . . . 1 50  
 Every report . . . . . 1 50  
 And for every folio beyond six folios, but not to exceed twenty folios in all . . . . . 20  
 Administering every oath and signing jurat. . . . . 40  
 All necessary travel, going and returning, per mile . . . . . 05  
 On sales of land in foreclosure and other equitable suits:—For sheriff or master attending the sale and receiving and paying over the amount, in lieu of all poundage . . . . . 10 00

COURT OF MARRIAGE AND DIVORCE.

The judge ordinary, for each day he shall actually attend . . . . . 4 00

*Advocate and Proctor's Fees.*

Retaining fee for counsel . . . . . 5 00  
 Proxy . . . . . 1 50  
 Draft of libel or other pleading, per folio . . . . . 20  
 Engrossing same, per folio . . . . . 10  
 Entering appearance . . . . . 75  
 Every subpoena, citation or other writ . . . . . 1 00  
 Copies for service, each . . . . . 30  
 Drawing affidavit of service of subpoena, citation, or other process or proceeding . . . . . 40  
 Every petition necessary in conducting a cause . . . . . 75  
 Every order . . . . . 75  
 Counsel fee on making or defending every special motion, not to exceed . . . . . 5 00  
 Drawing brief in every cause, per folio . . . . . 20  
 Counsel fee for examining and signing each pleading . . . . . 2 33  
 Draft of interrogatories, per folio . . . . . 20  
 Engrossing ditto . . . . . 10  
 Counsel fee on hearing or argument, not to exceed . . . . . 14 00  
 Making up bill of costs . . . . . 75  
 Serving every subpoena, or other writ or order . . . . . 70

Travel, per mile, from the residence of the party making service to the place of service.....	\$	05	<u>CHAP. 128.</u>
Every necessary attendance on the registrar.....	1	50	
Draft of decree, per folio.....		10	
Engrossing ditto.....		10	

*Registrar's Fees.*

Entering and filing every bill.....	50
Entering and filing every other pleading.....	30
Filing all other papers, each.....	10
Signing and sealing every writ, and certifying copies.....	50
Every search.....	20
Copies of all papers, per folio.....	10
Drawing and signing every rule or order.....	20
Every necessary attendance on the judge ordinary	1 00
Every court day.....	1 00
On procuring signature of final decree.....	1 50

*Commissioners on Examination of Witnesses.*

For taking the examination of every witness, each commissioner, per day.....	\$5 00
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## PROBATE COURT.

*Judge's Fees.*

Where the estate does not exceed \$400 and there is no contest, in full of all fees.....	4 00
Where the estate does not exceed \$800 and there is no contest, in full of all fees.....	6 00
Every citation, including order for the same.....	40
Every order not herein specially provided for.....	40
For the probate of a will or letters of administration where the estate does not exceed \$800, and order for the same.....	3 50
Ditto, ditto, when above \$800 and not exceeding \$4000, and order.....	4 00
Ditto, ditto, when above \$4000, and order.....	9 50
For warrant of appraisal and order for the same	50
For every subpoena, attachment, execution, or other process not otherwise provided for, including order for the same.....	20
Letters <i>ad colligendum</i> .....	2 00
Sentence or decree in ordinary cases of granting licenses to sell, mortgage or lease real estate, passing accounts of distribution, &c.....	2 00



CHAP. 128. Sentence or decree for probate of a will or codicil, letters of administration, or granting license to sell, mortgage or lease real estate, passing accounts of distribution, &c., where there is a contest.....	\$ 6 00
Transmitting appeal with statement of decision....	5 00
Taking testimony in writing where there is a contest, per folio.....	20
Warrant for appraisers to divide real estate, on petition of parties.....	1 00
<i>Dedimus potestatem</i> to take deposition of witnesses, and order therefor.....	1 00
Appointing and allowing guardians to minors, and order therefor.....	3 00
Every oath administered by him.....	20
Examining and taxing costs.....	50

*Registrar's Fees.*

Where the estate does not exceed \$400 and there is no contest, in full of all fees.....	4 00
Where the estate does not exceed \$800 and there is no contest, in full of all fees.....	6 00
For filing every paper .....	07
Probate of will and letters of administration and entry of order therefor, where the estate is under \$300.....	3 50
Where estate is above \$800 and does not exceed \$4000, and entry of order.....	4 00
Where estate is above \$4000, and entry of order therefor.....	9 50
Letters of guardianship or <i>ad colligendum</i> , and entry of order.....	2 00
Copy of will and probate, per folio .....	10
For preparing bond in all necessary cases.....	80
Preparing citation and seal.....	40
Each copy thereof.....	20
Preparing necessary affidavits, each.....	20
Filing every warrant and seal.....	50
Filing every certificate of license to sell real estate.	1 00
For all copies of papers, per folio.....	10
For every certificate and <i>dedimus potestatem</i> .....	1 00
For entry of every decree in registry book, and of every order not specially provided for, per folio.	10
Every search or inspection of documents.....	20
Preparing subpoena and seal.....	40
Filing each ticket for the same.....	10
Filing every caveat or appeal.....	40

Preparing every execution, attachment, or other process not specially provided for, and entry of order therefor . . . . .	\$ 40
Filing every decree . . . . .	2 00
Every oath administered by him . . . . .	20
Taxing costs . . . . .	50

*Proctor and Advocate's Fees.*

Taking instructions for client to commence or defend proceedings in probate court . . . . .	2 00
Preparing every petition . . . . .	1 00
Preparing every allegation or other paper necessary to be prepared by him, including accounts, per folio . . . . .	20
Every additional copy thereof, per folio . . . . .	10
Every necessary attendance on judge . . . . .	1 50
Every hearing or argument before the judge, not less than two dollars and fifty cents nor more than ten dollars, at the discretion of the judge.	
Serving every notice or other paper on each person.	20

*Sheriff or other Ministerial Officer's Fees.*

Serving citation or other process (subpœna excepted), on each person . . . . .	50
Posting up the same in three public places directed by the judge . . . . .	1 00
Serving subpœna on each person . . . . .	20
Travelling fees same as in Supreme Court.	

*Appraiser's Fees.*

For appraising the estate of a deceased person not to exceed, for each day he shall be actually employed . . . . .	2 00
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MAGISTRATE'S COURT.

*Justice's Fees.*

Each summons or capias and copy thereof . . . . .	40
Affidavit for a capias and swearing . . . . .	10
Subpœna . . . . .	20
Tickets . . . . .	10
Trial and judgment in all causes . . . . .	20
Venire . . . . .	20
Returning papers on appeal to Supreme Court . . . . .	20
Each execution . . . . .	20
Affidavit of service of summons when required and swearing . . . . .	10

CHAP. 128. Affidavit on appeal and swearing.....	\$ 10
Appeal bond.....	50

All fees taken in any suit wherein the services and presence of two justices are required as well as for execution therein, except for returning the papers on appeal, to be divided between the two justices acting therein as follows,—two-thirds to the justice first applied to, and the remaining third to the other.

*Constable's Fees.*

Serving summons and making return.....	\$ 20
Serving capias and making return.....	20
Bail bond.....	20
Summoning a jury.....	20
Summoning each additional juror where there are not sufficient by-standers.....	05
Serving subpoena, each witness.....	10
Serving execution.....	20
Poundage on execution on sale of goods.....	10
Poundage on execution where the amount is paid in money, for each four dollars.....	05
All travelling to be computed from residence of justice to residence of defendant, on summons, capias or execution, each mile when neces- sarily done; and from residence of officer to residence of witness, on subpoena, each mile when necessarily done.....	08
In cases of execution levied on the body, travelling to be computed from residence of officer to that of defendant, and thence to place of confinement, each mile.....	10

Where subpoenas are served by a constable, travel shall not be charged for serving each witness, but only so much travel as may be actually and necessarily performed by the constable in serving all the subpoenas.

*Witness' Fees.*

Each day in actual attendance.....	\$ 50
All travelling, to be computed from the residence of the witness to the place of trial, per mile....	08

NOTE.—If the witness at the time of being served with the subpoena demands his fees, he shall not be bound to attend unless fees equal to one day's attendance and his travel as above be tendered to him at the time, or at such other reasonable time before the day of trial, as to admit of his attendance with certainty.

*Juror's Fees.*

Each juror on every trial . . . . . \$ 20

*Fees of Jailer or Keeper of Lock-up House.*

For every person committed to jail on civil process 50  
 For every person discharged therefrom, except insolvents or indigent debtors and criminals. . . . . 50

BASTARDY CASES.

*Justice's Fees.*

The examination of the woman in writing . . . . . 20  
 Warrant to apprehend the reputed father before birth of the child . . . . . 40  
 Bond to indemnify the township or district. . . . . 60  
 Warrant to bring the reputed father and mother before the justices . . . . . 60  
 All commitments, each . . . . . 20  
 Bond to perform order of filiation, whether on appeal or otherwise . . . . . 60  
 Warrant to apprehend the reputed father when he shall not have appeared at the time of making order of filiation . . . . . 40  
 Order of filiation, per folio . . . . . 10

*Constable's Fees.*

The same as in other cases before justices.

FEES OF REGISTRAR OF DEEDS.

For the attestation of a subscribing witness. . . . . 20  
 For entering and registering every deed or conveyance, every 90 words . . . . . 10  
 For entering every docket of judgment or attachment . . . . . 50  
 For registering appraisement, per folio . . . . . 10  
 For entering and filing a discharge of judgment or attachment . . . . . 20  
 For every certificate of registry written on any deed or conveyance (not to be charged in case of judgment or attachment, or discharge thereof, or of the release of a mortgage). . . . . 20  
 For every office copy from the books of registry delivered out, 100 words . . . . . 10  
 For every certificate upon such office copy, where such shall be required . . . . . 20

<u>CHAP. 128.</u> For every search, whether for a single deed or conveyance, or for a single title, made on one and the same day.....	\$	20
For filing, indexing, and entering every bill of sale or copy.....		20
For administering every oath thereon.....		20
For entering and indexing every certificate of discharge.....		20
For inspection of bill of sale.....		20
For every certificate of title and encumbrances furnished in foreclosure or other suits at law, or in equity, under any general rule of court or order in a cause.....	2	50

## FEES ON DISTRESS FOR RENT.

Warrant to bailiff.....	50
Appraisement.....	20
Notice and each necessary copy.....	10
Appraisers, each.....	25
On a sale, the same fees as to a sheriff.	
No custody money to be allowed.	

## CROWN LAND OFFICE FEES.

For every search.....	30
Copy of any grant.....	50
For every copy of, or portion of, or an entire general plan of a county, such reasonable sum as the Commissioner may approve.	
Copies of other documents, per folio.....	10

The above fees shall not apply to applicants for grants, or to information in connection with such applications; and all such fees shall be paid into the office of the Treasurer and accounted for in the annual account of the Commissioner of Crown Lands.

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APPENDIXES

TO THE

REVISED STATUTES

OF

NOVA SCOTIA.

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FIFTH SERIES.

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OF  
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# APPENDIX A.

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*Unrepealed Enactments of the Legislature of Nova Scotia, not included in the Revised Statutes, Fifth Series.*

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## I.

Enactments within the Jurisdiction of the Legislature  
of Nova Scotia.CHAPTER 23 OF THE REVISED STATUTES, THIRD  
SERIES.

## OF NAVAL PROPERTY.

1. All messuages, lands, tenements and hereditaments, erections, buildings and property whatever, which have been conveyed to or are vested in any person or persons, or are held or in any manner occupied by or in the name of any person or persons, in trust for Her Majesty or her royal predecessors, and her or their heirs or successors for the use of the naval service of the United Kingdom, or of any of the departments of or belonging to the said naval service by whatever mode of conveyance, or by whatever title or for whatever estate or interest therein, the same shall have been conveyed or be vested, held or occupied, together with the rights, members, easements and appurtenances to the same respectively belonging, shall be and become and remain and continue vested in the Lord High Admiral of the said United Kingdom, or the Commissioners for executing the office of Lord High Admiral aforesaid for the time being, according to the respective nature and quality of the said messuages, lands, tenements and hereditaments, and the several estates and interests of and in the same respectively in trust for Her Majesty, her heirs and successors, for the public service.

2. From and after the purchase and conveyance, grant or demise thereof, all other messuages, lands, tenements and hereditaments which shall at any time or times hereafter be purchased, taken, held or occupied by the Lord High Admiral or the Commissioners for executing the office of Lord High Admiral aforesaid for the time being, or by any person or persons by his or their order for the naval service of the said United Kingdom, or of any of the departments of or belonging to the said naval service, and all erections and buildings which shall then or may be thereafter erected or built thereon, with the rights, members, easements and appurtenances to the same

Property held for the naval service to be vested in Lord High Admiral or Commissioners for time being.

Also lands subsequently purchased.

respectively belonging, shall in like manner be and become and remain and continue vested in the Lord High Admiral of the said United Kingdom, or the Commissioners for executing the office of Lord High Admiral aforesaid for the time being, and his or their successors in the said office, according to the respective nature and quality of the said messuages, lands, tenements and hereditaments, and the several estates and interests of and in the same respectively, in trust as aforesaid.

In case of death, removal, &c., to be vested in successors.

3. Upon the death, resignation or removal of the present Commissioners for executing the office of Lord High Admiral of the United Kingdom, or of any of them, or of any future such Commissioners, or of any Lord High Admiral of the said United Kingdom, all such messuages, lands, tenements and hereditaments respectively shall become vested in and be held by the succeeding commissioners for executing the office of Lord High Admiral aforesaid, or the Lord High Admiral aforesaid, as the case may be, and so in perpetual succession, according to the respective nature and quality of the said messuages, lands, tenements and hereditaments, and the several estates and interests of and in the same respectively, in trust as aforesaid.

Titles of commissioners to be used in deeds, &c.

4. In all deeds, conveyances, leases, contracts and other instruments touching any estate, property, matter or thing relating to the naval service of the said United Kingdom, or to any department under the control of the Commissioners for executing the office of Lord High Admiral aforesaid, or whereto they or any of them shall be parties, it shall be sufficient to describe them generally by the style and title of "The Commissioners for executing the office of Lord High Admiral of the United Kingdom of Great Britain and Ireland," without expressing their names; and all such deeds, conveyances, leases, contracts and other instruments, wherein the said Commissioners shall be so described, and the execution or signature thereof by any two of them, shall be as valid and effectual to all intents and purposes as if they or any of them had been expressly named therein and had executed or signed the same.

Powers of commissioners, &c., to sell, lease, &c.

5. It shall and may be lawful for the Commissioners for executing the office of Lord High Admiral aforesaid for the time being, or any two or more of them, or the Lord High Admiral aforesaid, to sell, exchange, or in any manner dispose of or let, or demise any of the messuages, lands, tenements and hereditaments respectively which shall be vested in them under or by virtue of this Chapter, with their respective appurtenances, either by public auction or private contract, and in due form of law to convey, surren-

der, assign or make over, or to grant or demise the same respectively, as the case may require, to any person or persons who shall be willing to purchase or take the same respectively, and also to do any other act, matter or thing in relation to any such messuages, lands, tenements and hereditaments which they or he shall deem beneficial for the public service in relation thereto or for the better management thereof, which might be done by any person or persons having a like interest in any such messuages, lands, tenements or hereditaments.

6. It shall be lawful for the said Commissioners for executing the office of Lord High Admiral aforesaid for the time being, or the Lord High Admiral aforesaid for the time being, and they are hereby authorized and empowered to bring, prosecute, and maintain any action, suit, or other proceeding at law or in equity, for recovering possession of any messuages, lands, tenements or hereditaments, by this Chapter vested in them or him as aforesaid, and to distrain or sue for any arrears of rent which shall have or shall become due for or in respect thereof, under any demise from the said Commissioners or Lord High Admiral, or any person or persons on their or his behalf, or on behalf of Her Majesty, and also to bring, prosecute or maintain or to defend any other action or suit in respect of or in relation to the said messuages, lands, tenements or hereditaments, or any trespass or encroachment committed thereon, or damage or injury thereto; and that in every such action or suit the said Commissioners shall be called "the Commissioners for executing the office of Lord High Admiral of Great Britain and Ireland," without naming them; and no such action or suit shall abate by the death, resignation or removal of such Commissioners, or any of them, or of such Lord High Admiral, any law, custom, or usage to the contrary notwithstanding; and the said Commissioners or Lord High Admiral shall be entitled to recover costs for and on behalf of Her Majesty where judgment shall be given for the Crown, and shall be liable to pay costs where judgment shall be given against the Crown, in any such action, suit or other proceeding in like manner, and subject to the same rules and provisions, as though such action, suit or other proceeding had been had between subject and subject.

Commissioners, &c., may prosecute and defend actions.

Action not to abate on death.

May recover and be liable to pay costs.

## CHAPTER 7 OF THE ACTS OF 1857;

ENTITLED,—“AN ACT FOR TRANSFERRING TO HER MAJESTY’S SECRETARY OF STATE FOR THE WAR DEPARTMENT THE POWERS AND ESTATES VESTED IN THE PRINCIPAL OFFICERS OF HER MAJESTY’S ORDNANCE DEPARTMENT.”

All property heretofore vested in Ordnance under chapter 50, 1843, &c., transferred to Secretary for War Department.

1. All lands, hereditaments, estates and property whatsoever, which, by virtue of the Act passed in the sixth year of Her present Majesty’s reign, entitled, “An Act relating to certain Lands belonging to Her Majesty, and for vesting the title to the same in the Principal Officers of Her Majesty’s Ordnance Department,” or of any other Act or Acts, or of any conveyance or assurance, or of any law, custom or usage, were vested in the principal officers of Her Majesty’s Ordnance, on behalf of Her Majesty, or which have been at any time before the passing of this Act held, used or taken by or in the name of, or by any person in trust for Her Majesty, for the use and service of the said department, or for the public defence, and which have not been sold, aliened or parted with, shall from henceforth be, and the same are hereby transferred and declared to be transferred to, and vested in Her Majesty’s Principal Secretary of State for the War Department, on behalf of Her Majesty, and when and so often as the Principal Secretary of State for the War department, or any succeeding Principal Secretary of State for the War Department, shall cease to hold that office, the said several lands, hereditaments, estates and property, and all lands, hereditaments, estates and property which hereafter shall be purchased or otherwise acquired by any such Principal Secretary of State for the War Department, on behalf of Her Majesty, shall by virtue of this Act be absolutely divested out of such Secretary of State so ceasing to hold such office, and shall by virtue of this Act be transferred to and vested in his successor in the said office, immediately upon his receiving the seals of the said department, absolutely; and the lands, hereditaments, estates and property hereby vested and hereafter to be vested in the Principal Secretary of State for the War Department and his successors, shall, as to such of them as were or shall have been purchased, or are or shall be held for an estate of inheritance in fee simple, be so vested in such Principal Secretary of State and his successors, in the same manner as if the fee simple thereof had been originally conveyed to such Principal Secretary of State as a corporation sole and his successors; and as to all lands, hereditaments and property purchased or held for any less estate than an estate of inheritance in fee simple as if the same lands, hereditaments and property had been originally conveyed, demised or otherwise assured to such

Principal Secretary of State as a corporation sole and his successors, for all the existing estates and interests therein respectively, and so from time to time.

2. All contracts, covenants and agreements heretofore made or entered into by any person or persons whomsoever with the principal officers of the Ordnance or any person or persons on their behalf, as to or concerning any lands, hereditaments, estates and property vested in or agreed to be purchased by them, or in any wise relating to the public service, shall be deemed to have been made or entered into with such Principal Secretary of State, and shall be executed and enforced by him in like manner as if he had been originally party thereto, instead of the principal officers of the Ordnance; and all proceedings whatsoever which have been or may have been commenced, taken or done in the name of the principal officers of the Ordnance on behalf of Her Majesty, shall and may hereafter be commenced, continued, taken and done in the name of such Principal Secretary of State for the War Department, in like manner (in case of proceedings already commenced, taken or done) as if he had originally been party thereto, instead of the principal officers of the Ordnance.

3. In every contract, conveyance, lease or other assurance of any lands, hereditaments, estates or property, with, unto or by the Principal Secretary of State for the War Department for the time being, and in every other deed or instrument relating thereto, or in any wise to the public service, to which he shall be or shall be intended to be a party, it shall be sufficient to call or describe him by the style or title of "Her Majesty's Principal Secretary of State for the War Department," without naming him; and every such contract, conveyance, lease, assurance, deed or instrument may be executed by the Principal Secretary of State for the War Department or by any other of Her Majesty's principal secretaries of state for the time being, by signing his name thereto, and, if the instrument so executed be in the form of a deed, by setting or affixing a seal thereto and delivering the same as his deed; and whenever any contract, conveyance, lease, assurance, deed or instrument shall be executed by any other principal secretary of state than the Principal Secretary of State for the War Department, the principal secretary of state so executing the same shall for that time and on that occasion, and for the purposes thereof, be deemed to be the Principal Secretary of State for the War Department.

NOTE.—As an acquaintance with the exact provisions of Chapter 6 of the Acts of 1843, does not seem to be necessary for the complete understanding of the above Act, and, as the Act of 1843, besides being printed in the volume of statutes for that year, may be found at page 120 of the volume of Private and Local Acts published in 1851 under the supervision of the Commissioners for revising and consolidating the Laws of the Province, it has not been deemed advisable to reprint it here.

## CHAPTER 27 OF THE ACTS OF 1879,

ENTITLED, "AN ACT RELATING TO THE TAXATION OF COTTON MILLS."

*(As Amended by Chapter 16 of the Acts of 1882.)*

Certain cotton mills exempt from taxation.

Provisoos.

1. Any cotton mill that may be erected in Nova Scotia by any person or company, and all real and personal property connected therewith, and the capital employed therein, shall be exempt from all provincial, municipal and local taxation for a period of twenty years from the passing of this Act : provided that such cotton mill shall be erected and in operation before the tenth day of March, A. D. 1885, and provided also that a sum of not less than one hundred thousand dollars shall be expended in the construction of such cotton mill, machinery and real estate.

## CHAPTER 27 OF THE ACTS OF 1879,

ENTITLED, "AN ACT RELATING TO THE TAXATION OF SUGAR REFINERIES."

Certain sugar refineries exempt from taxation.

Provisoos.

1. Any sugar refinery to be erected in Nova Scotia by any person or company, and all real and personal property connected therewith, and the capital employed therein, shall be exempt from all county rates and other local taxation for a period of twenty-one years : provided that such sugar refinery shall be erected and in operation within three years from the passing of this Act, and provided also that a sum of not less than two hundred thousand dollars shall be expended in the construction of such refinery buildings, machinery and real estate.

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NOTE.—See also Chapter 74 of the Acts of 1883.

## II.

Enactments upon matters wholly or partially within the jurisdiction of the Parliament of Canada, or of doubtful jurisdiction.

*Chapters and Parts of Chapters of the Third Series of the Revised Statutes.*

### CHAPTER 23.

OF SABLE, SAINT PAUL, AND SCATTARIE ISLANDS, AND OF LIGHT HOUSES.

3. Every member of the board, and also their superintendent and resident keeper, shall have in every respect upon Sable Island and Saint Paul's Island, and in relation to wrecks or wrecked goods there and elsewhere, the same power and authority as a justice of the peace.

Members of board, &c., may act as justices.

5. In all proceedings in any court, Sable Island shall be held within the County of Halifax, and Saint Paul's Island within the County of Victoria; and any person charged with committing any criminal offence committed thereon, or on the shores, banks or bars thereof, may be proceeded against and tried as if the islands were actually within the body of such counties respectively.

Sable Island within Halifax county.  
St. Paul's, Victoria county.

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NOTE.—Sections 1, 2 and 4 repealed by Section 11 of Chapter 59 of the Statutes of Canada for 1868. Section 6 obsolete.

### CHAPTER 81.

OF FACTORS AND AGENTS.

1. Any agent entrusted with the possession of goods or the documents of title thereto shall be deemed the owner thereof, so as to render valid and binding upon all persons interested therein any contract made with such person for the purchase of such goods, or by way of pledge, lien or security for advances upon such goods or

Agent in possession of goods or the title thereof empowered to self or pledge them.



documents, or for further or continuing advances thereon, although the person making such purchase or claiming such pledge or lien may have had notice that the person with whom such contract is made is only an agent or factor; provided such contract be made in the ordinary course of business, and such person shall not have notice at the time of making such contract that such agent is not authorized to sell the goods and receive the purchase money, or to pledge such goods.

Agent's powers in cases of exchange of goods or their titles.

2. Any contract for pledge, lien or security made by an agent entrusted with the possession of goods or the documents of title thereto, in consideration of the delivery or transfer to him of other goods or documents of title or negotiable securities on which the person delivering them has at the time a valid lien for a previous advance by virtue of some contract made with such agent, shall be as valid as if the consideration therefor had been an advance of money; but the lien acquired thereby shall not exceed the value at the time of the goods, documents of title, or negotiable security delivered up and exchanged.

Contracts made with agents in good faith to be held valid; lien for antecedent debt invalid.

3. Such contracts, loans, advances and exchanges as are made in good faith, and without notice that the agent making such contracts or agreements is acting without authority or in bad faith, although with notice of such agent not being the owner of the goods, are alone rendered valid hereby and binding upon all persons interested therein. Nothing herein shall make valid any sale, lien or pledge in respect of an antecedent debt owing from an agent to the person to whom such lien or pledge shall be given or sale made, or authorize an agent in deviating from any express orders or authority received from the owners.

Documents of title defined.

4. Any document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize the holder to transfer or receive goods thereby represented, shall be considered a document of title within the meaning hereof.

Possession of documents of title possession of goods.

5. Any agent possessed of any such document, whether derived immediately from the owner of such goods or obtained by reason of such agent's having been possessed of the goods or any other document of title thereto, shall be deemed to be possessed of the goods represented by such document.

Pledge upon title to be pledged upon goods.

6. Any contract pledging or giving a lien upon such document shall be deemed a pledge or lien upon the goods to which the same relates.

Agent to be considered in possession of goods, when under his control.

7. Such agent shall be deemed possessed of such goods or documents, whether the same be in his actual custody or be held by any other person subject to his control or on his behalf.

8. Where any advance is made to an agent possessed of goods or documents of title thereto, on the faith of a contract in writing to consign, deposit, transfer or deliver such documents; if such goods or documents shall be received by the person making such advance without notice that such agent was not authorized to make such pledge or security, such advance shall be deemed to be an advance on the security of such goods or documents within the meaning hereof, though such goods or documents shall not be received by the person making the advance until a period subsequent to such advance. Any contract, whether made directly with such agent or with any person on his behalf, shall be deemed to be made with such agent.

Advance to an agent possessed of goods or their title, where agent not authorized to pledge, when held valid; contracts by others for agents held valid.

9. Any payment, whether by money or negotiable security, shall be deemed an advance within the meaning hereof.

Advances may be in money or negotiable securities.

10. Any agent in possession of goods or the documents of title thereto shall be deemed entrusted therewith by the owner unless the contrary be shown in evidence.

Possession by agent of goods or their title, evidence of agency.

11. Any agent who shall, unauthorized by his principal, for his own benefit and in violation of good faith, make any consignment, deposit, transfer or delivery of any goods or documents of title so in his possession as a pledge or security, or accept any advance on the faith of a contract to make any such consignment, deposit, transfer or delivery, shall be guilty of a misdemeanor, and be imprisoned in the Provincial Penitentiary for a term not exceeding seven or less than two years, or be fined, or both, as the court shall award.

Agent pledging goods illegally, guilty of a misdemeanor.

12. Any person knowingly and wilfully assisting in making any such consignment, deposit, transfer or delivery, or accepting or procuring such advance, shall be guilty of a misdemeanor, and shall be sentenced to any of the punishments above mentioned as the court shall award.

Accessories also guilty of a misdemeanor.

13. No agent shall be liable to prosecution for any such consignment, deposit, transfer or delivery as above mentioned for advances not greater than the amount at the time thereof due to such agent from his principal, together with the amount of any bills of exchange drawn by or on account of such principal and accepted by such agent.

Agent may pledge goods for advances on acceptances.

14. The conviction of any such agent shall not be evidence in any suit against him, and no agent shall be liable to such conviction upon any evidence whatsoever, who shall previous to his indictment have made disclosure upon oath under compulsory process of any court in any action instituted in good faith by a party aggrieved.

Conviction not evidence against agent; compulsory disclosures not evidence against agent.

Owner may  
redeem goods  
pledged.

15. Nothing herein shall affect the right of the owner to redeem such goods or documents of title so pledged before the sale thereof, upon re-payment of the amount of the lien thereon or restoration of the securities in respect of which such lien exists, and on payment or satisfaction to such agent if by him required of any amount in respect of which he would be entitled to retain such goods or documents as against such owner; nor his right to recover from any person to whom such goods or documents have been pledged, or who may have a lien thereon, any proceeds of the sale thereof remaining in his hands after deducting the amount of such pledge or lien.

Proceedings under  
this Chapter  
not to affect  
other remedies.

16. These provisions shall not, nor shall any conviction or judgment under them, lessen or in any way affect any remedy at law or in equity which any person aggrieved would have had against the offender if such provisions had not been made.

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### CHAPTER 123.

#### OF THE SUPREME COURT AND ITS OFFICERS.

Criminal calendar and depositions to be sent to the grand jury; indictments when made out

17. A calendar of the criminal causes shall be sent by the clerk of the Crown to the grand jury in each term, together with the depositions taken in each cause, and the names of the different witnesses; and the indictments are not to be made out, except in Halifax, until the grand jury shall so direct.

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NOTE.—The remainder of this Chapter was incorporated in Chapter 89 of the Revised Statutes, Fourth Series, which again has been substantially re-enacted in Chapter 104 of the Revised Statutes, Fifth Series, "Of the Supreme Court and Procedure therein."

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### CHAPTER 126.

*(As amended by Chapter 13, 1866, and Chapter 22, 1870.)*

#### OF THE COURT FOR DIVORCE AND MATRIMONIAL CAUSES.

Judge in equity  
Judge ordinary.  
[C. 13, 1866, ss.  
1, 2.]

1. The Judge in Equity for the time being shall be the Judge Ordinary of the Court for Divorce and Matrimonial Causes.

Temporary appointment.  
[C. 22, 1870.]

2. During the illness or temporary absence of the Judge Ordinary or in cases where he may be disqualified from acting from any cause, the Governor-in-Council shall if necessary by warrant under his hand and seal appoint

the chief justice or one of the judges of the Supreme Court to act as judge ordinary during such illness, absence or disqualification, who when so acting shall have and exercise all the powers and jurisdiction conferred on the Judge Ordinary by this Chapter or any other enactment.

3. The Governor shall direct a seal to be made for the court, and may direct the same to be broken, altered or renewed at his discretion; and all decrees and orders, or copies of decrees, orders or proceedings of the court, sealed with such seal, shall be received in evidence. Seal of court.  
[C. 13, 1866, s. 4.]

4. The present registrar shall continue in office; and on any vacancy occurring, the Governor shall appoint the registrar of the court. Registrar.  
[C. 13, 1866, s. 5.]

5. The rules, orders, process and other proceedings of the court may be signed by the registrar; and the signature of the judge ordinary shall not be necessary unless the court shall otherwise order. Registrar may  
sign orders, &c.

6. The court shall have jurisdiction over all matters relating to prohibited marriages and divorce, and may declare any marriage null and void for impotence, adultery, cruelty, or kindred within the degrees prohibited in an Act made in the thirty-second year of King Henry the Eighth, entitled, "An Act concerning Pre-contracts, and touching Degrees of Consanguinity": provided that no marriage shall hereafter be deemed to be null and void by reason of pre-contract; and whenever a sentence of divorce shall be given, the court may pronounce such determination as it shall think fit on the rights of the parties or either of them to curtesy or dower. Jurisdiction of  
court.

7. The court may direct the examination of witnesses orally; may declare, by definitive sentence or otherwise, the marriage between the parties in the suit to be null and void from such time as the court may deem proper; may allow costs and alimony to the wife during the suit; and upon its termination may award costs to either of the parties. Trial and deci-  
sion.

9. The court may enforce the performance of any sentence by means of an execution similar to that issued out of the Supreme Court; and when any property is sold by virtue of such execution, the proceeds thereof, deducting poundage and expenses, shall be paid into the registry of the court, to be disposed of as the court may direct. Execution.

10. Either party dissatisfied with any decision of the court may, within fourteen days after the pronouncing thereof, appeal therefrom to the judges of the Supreme Court, of whom three at the least in addition to the judge ordinary shall form a quorum; and, on the hearing of any such appeal, the appeal court may either dismiss the appeal Appeal to Su-  
preme Court.  
[C. 13, 1866, s. 6.]

or reverse the decree or remit the case to the court, to be dealt with as the appeal court shall direct.

Parties may marry again. [C. 13, 1866, s. 7.]

11. After the period limited for appealing shall have expired, and no appeal shall have been presented against such decree of dissolution of marriage, or when any such appeal shall have been dismissed, or when on the result of any appeal any marriage shall be declared to be dissolved, and not sooner, it shall be lawful for the respective parties thereto to marry again, as if the prior marriage had been dissolved by death; but no minister shall be liable to any penalty for refusing to publish any banns of marriage, or to solemnize a marriage either after banns or by license, in any case where either of the persons desiring to be married shall have been so divorced.

Proviso.

Alimony, in discretion of court. [C. 13, 1866, s. 9.]

12. The court may, if it shall see fit, on any decree for dissolution of marriage, order that the husband shall to the satisfaction of the court secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it shall deem reasonable; and in respect thereof shall have the like powers as are possessed by the Court for Divorce and Matrimonial Causes in England.

Powers same as of English court. [C. 13, 1866, s. 10.]

13. The court shall have the same powers in respect of or as incidental to divorce and matrimonial causes, and the custody, maintenance and education of children, as are possessed by the Court for Divorce and Matrimonial Causes in England, except as enlarged, abridged, altered or modified by this Chapter. But in causes instituted on the ground of adultery, the court shall not have authority to permit the introducing co-respondents, or to try the issue of fact by jury.

Exceptions.

Examination of witnesses.

14. The examination of witnesses shall take place before an examiner to be appointed by the court, unless oral examination shall be directed. And the rules of evidence observed in the Supreme Court shall be applicable to, and be observed in the trial of all questions of fact in this court. And all Provincial Acts that relate to the examining of witnesses *de bene esse*, or abroad, or the taking of evidence or depositions, shall equally apply to this court as to the Supreme Court, unless in cases where special exceptions preclude. But, in proceedings by a wife by reason of adultery, coupled with cruelty, nothing in the forty-fourth or forty-fifth section of Chapter 135 of the Revised Statutes, Third Series, shall prevent the husband and wife respectively from being competent and compellable to give evidence of or relating to such cruelty.

Rules of evidence same as in Supreme Court. [C. 13, 1866, s. 11.]

In cases of cruelty, husband and wife competent witnesses.

15. All persons wilfully deposing or affirming falsely in any proceedings before the court, shall be deemed guilty of perjury, and shall be liable to all the pains and penalties attached thereto.

Who guilty of perjury.  
[C. 13, 1866, s. 12.]

16. Affidavits, declarations or affirmations taken in such manner as to be used in the Supreme Court, whether taken in England or in any of Her Majesty's possessions, or in parts out of Her Majesty's dominions, may be received as sufficiently authenticated by the court, subject to the rules of the court.

Affidavits, &c., taken abroad admissible as in Supreme Court.  
[C. 13, 1866, s. 16.]

17. The court shall make such rules and regulations concerning the practice and procedure of the court, as it may from time to time consider expedient; and shall have full power from time to time to revoke or alter the same. But such rules shall not go into operation until they shall have been published in the *Royal Gazette*.

Court shall make rules to come into operation when published in *Gazette*.  
[C. 13, 1866, s. 13.]

18. The judge ordinary may sit at chambers when he shall deem it expedient to do so; and when so sitting shall have and exercise the same powers and jurisdiction in respect to the business to be brought before him as if sitting in open court. And the judge ordinary when sitting in open court and at chambers shall have and exercise the like authority and control over the persons appearing or practising before him as the judges of the Supreme Court have and exercise over persons appearing and practising before them therein.

Judge ordinary may sit at chambers.

Judge ordinary to have powers of judge of Supreme Court over persons in court.  
[C. 13, 1866, s. 14.]

19. The court on the hearing of any suit, proceeding or petition, and the appeal court on the hearing of any appeal, may make such order as to costs as to such courts respectively may seem just. Provided that there shall be no appeal on the subject of costs only.

Costs.  
[C. 13, 1866, s. 15.]

Proviso.

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## CHAPTER 129.

### OF STIPENDIARY OR POLICE MAGISTRATES :

#### *With Amendments.*

1. The general sessions of any county or district upon application by petition, signed by at least fifty freeholders in any proposed police division, may, if they think fit, appoint a committee of three disinterested persons to inquire into and report upon the propriety and expediency of creating such division.

Police division.

2. Such committee, if approving thereof, shall assign the limits, and assign a name to any such proposed division,

Proceedings to set off same.

and report the same in writing to the court, and thereupon the clerk of the peace shall cause the substance of such report to be advertised by notice, put up in at least two of the most public places of the proposed police district, and that the confirmation of the same will be considered at the next general sessions; but such notice shall not be required on reporting any application from the town of New Glasgow, Truro or Kentville; but the court may proceed at once to the confirmation of any report of a committee recommending the appointment of a stipendiary magistrate for either of said towns.

(C. 9, 1877.)

Report to be confirmed.

3. On such report being approved of by the grand jury and confirmed by the court, the place within the limits contained therein shall thenceforth be and become a police division, by the name assigned in such report, and shall be subject to the provisions of this Chapter.

Meetings of justices in police division.

4. Within ten days after the creation of any such police division, the clerk of the peace for the county shall summon the justices residing within the limits of the division to meet at some central place therein, to carry out the provisions of this Chapter; and shall attend at such meeting and record the proceedings thereof.

Stipendiary justices, how appointed, &amp;c.

5. The majority of the justices present at such meeting shall proceed to select one or more of their number to be stipendiary justices for the division, who shall continue in office until superseded by the order of the majority of the justices residing within the division, or until they cease to be justices of the peace.

Their powers, duties, &amp;c.

6. The stipendiary justice or justices selected, or one of them, shall, whenever occasion may require, or he or they may think necessary, act as a police court within the aforesaid limits, and shall have and exercise all powers necessary for the preservation of the public peace and good order, the protection of property, and the repressing offences against the Sabbath, or using profane or obscene language, and also shall have power to hear and determine in a summary manner, all larcenies where the value of the goods stolen shall not exceed twenty dollars, receiving of stolen goods, assaults, batteries, riots, petty trespasses, malicious or wanton injuries to property and breaches of the peace, committed within the limits aforesaid.

Where only one police magistrate appointed, on trial of larcenies, two justices to sit with him. Jury.

7. In districts where only one stipendiary police magistrate has been appointed, such police magistrate shall require two justices of the peace to preside with him on the trial of all larcenies; and a jury of three persons shall be sworn to try the offender, if required by him.

Punishment, fines, &amp;c.

8. The court shall have power to punish offenders upon conviction of any offences within their jurisdiction,

by imprisonment in the lock-up house or county jail, for a period not exceeding sixty days, or by fine, not exceeding in any case twenty dollars and costs of prosecution; and in case of non-payment of the fine and costs, may commit the offender to the lock-up house or jail, for any time not exceeding sixty days.

9. Offences shall be prosecuted in every case within two months after commission. Limitation of actions.

10. No such conviction shall be quashed for want of form, and no warrant of commitment shall be held void by reason of any defect therein, so as it be therein alleged that the party has been convicted of some offence, named therein. Conviction, &c., not to be quashed for want of form.

11. The police court shall have power to hold persons charged with offences, as under recognizances with sureties, to appear and answer in the Supreme Court or the court of sessions, and for want of recognizance to commit to the lock-up house or county jail. Court may take recognizances for sessions or Supreme Court.

12. All process issued by the court shall be signed by one or more of the justices. Process, how signed.

13. Such justice or justices on their appointment, shall appoint a police constable, who shall have power within the said limits to arrest any person who in his presence shall be guilty of any of the offences within the cognizance of such police justices, and take them before one or more of the justices, and if such justice shall consider it necessary, the police court shall meet and adjudicate upon the case; but no person shall be detained in custody from the time of his arrest until the hearing of his case more than thirty hours, except the arrest be made on Saturday; but upon a hearing the person in custody may be remanded for the procuring of evidence or other sufficient cause; but nothing herein shall prevent any person so arrested from being delivered on bail, if entitled to be so delivered; and such justice or justices may dismiss any such police constable and appoint another. Appointment of police constable, his powers, &c.

14. All persons shall be bound on request to assist the constable in the execution of his duty, and any person refusing shall be fined not less than one dollar, nor more than four dollars, by any one of such justices. Court, when held, &c., arrest of parties remanded, bail, &c.

15. The salaries of the stipendiary justices and constables over and above their fees hereinafter prescribed, shall be fixed by the court of sessions, and shall be assessed and collected by an equal rate upon the ratable inhabitants of the police division, in the same manner as poor rates are collected. All persons to assist constable. Fine. Salaries.

16. The clerk of the peace for the county shall make out the collector's roll for the police division, and the same How collected. [See C. 18, 1870.]



shall be collected by a collector for the police division, to be approved by the sessions in the same manner as other county officers.

Sessions may make regulations.

17. The general sessions shall have power to make regulations for the preservation of the peace within any such police division; provided the same shall not be repugnant to law.

Jurisdiction of police magistrate in civil matters.

18. Any such police magistrate shall in all civil matters have the same jurisdiction as is now conferred upon two justices.

Fees.

19. The fees hereinafter enumerated shall be chargeable for the services herein mentioned, viz. :

For affidavit—twenty cents.

For warrant—fifty cents.

Service of process—twenty-five cents.

Recognizance—sixty cents.

Judgment—twenty cents.

Warrant of commitment—twenty cents.

Subpœna—ten cents.

17th clause to apply to town of Pietou.

20. The seventeenth clause shall be applicable to the police court for the town of Pietou; and appeals in that court shall only be granted under the provisions of said clause.

Appeal.

21. A party aggrieved by any judgment for any sum of money as debt, damage or penalty under this Chapter, shall be entitled to an appeal therefrom in the same way and on the same terms as appeals are allowed from the judgments of justices of the peace, but in no other cases.

## CHAPTER 6 OF THE ACTS OF 1865;

ENTITLED, "AN ACT TO AMEND CHAPTER 129 OF THE REVISED STATUTES, THIRD SERIES, 'OF STIPENDIARY OR POLICE MAGISTRATES.'"

Report of committee, how confirmed.

1. The written report of the committee required by sections one and two of such chapter, may be confirmed at a special sessions called for that purpose during the sitting of the Supreme Court in any county, and with the approval of the grand jury then assembled as fully as the same can be done at the general sessions, provided that notice of such intended confirmation be posted by the clerk of the peace in three public places within such proposed police division for ten days previously.

2. The provisions of the chapter hereby amended, and of this Act, may be carried into effect as regards Port Mulgrave in the County of Guysborough, notwithstanding that the petition on which such proceedings are founded shall not be signed by more than twenty freeholders residing within the limits of the proposed police division.

Provisions of chapter and Act to apply to Port Mulgrave.

#### CHAPTER 57 OF THE ACTS OF 1874;

ENTITLED, "AN ACT TO AMEND CHAPTER 129 OF THE REVISED STATUTES, THIRD SERIES, 'OF STIPENDIARY OR POLICE MAGISTRATES,' SO FAR AS REGARDS THE COUNTY OF VICTORIA."

1. Hereafter it shall be imperative on the grand jury and justices of the County of Victoria in general sessions, in districts where police constables are appointed, to nominate and appoint two justices of the peace to act as stipendiary or police magistrates for each of such districts.

General sessions to appoint police magistrates.

2. So much of the chapter hereby amended or of any other enactment as is inconsistent with this Act, is repealed so far as regards the County of Victoria.

Inconsistent law repealed.

#### CHAPTER 59 OF THE ACTS OF 1875;

ENTITLED, "AN ACT TO AUTHORIZE THE APPOINTMENT OF A STIPENDIARY MAGISTRATE FOR THE TOWN OF ANTIGONISH."

1. The court of general sessions of the peace for the County of Antigonish may appoint a stipendiary magistrate for the Town of Antigonish, according to the provisions of Chapter 129 of the Revised Statutes, "Of Stipendiary or Police Magistrates"; but to make such appointment valid it shall not be necessary that the grand jury of such county shall approve of the report of the committee to be appointed under the provisions of the first section of such chapter.

Stipendiary magistrate for Town of Antigonish, how appointed.

#### CHAPTER 60 OF THE ACTS OF 1876;

ENTITLED, "AN ACT TO AUTHORIZE THE APPOINTMENT OF A STIPENDIARY MAGISTRATE FOR THE TOWN OF YARMOUTH."

1. The appointment of a stipendiary magistrate for the Town of Yarmouth under the authority of Chapter 129 of the Revised Statutes, Third Series, "Of Stipendiary or Police Magistrates," shall be lawful, although the grand

Appointment legalized.

Proviso.

jury of the Township of Yarmouth do not approve of the report of the committee to be appointed under the provisions of such chapter: Provided the provisions of such chapter in reference to the appointment of stipendiary magistrates are complied with in all other respects.

Preliminary steps.

2. The necessary preliminary steps for the appointment may be taken at any general sessions of the peace for the Township of Yarmouth, or at any special sessions to be called for the purpose, at any time after the passing of this Act.

#### CHAPTER 51 OF THE ACTS OF 1878;

ENTITLED, "AN ACT TO EXTEND THE JURISDICTION OF THE STIPENDIARY MAGISTRATE OF YARMOUTH."

Jurisdiction extended.

1. The stipendiary or police magistrate appointed for the police division of Yarmouth shall have the same jurisdiction in all parts of the County of Yarmouth as is now conferred upon two justices of the peace.

#### CHAPTER 1 OF THE ACTS OF 1880;

ENTITLED, "AN ACT TO AMEND THE COUNTY INCORPORATION ACT, 1879."

Stipendiary magistrates, how appointed and removed.

Sec. 21. The municipal council may at any meeting appoint one or more police or stipendiary magistrates, under the provisions of chapter 129 of the Revised Statutes, Third Series, and the Act or Acts in amendment thereof; and may remove any such person so appointed according to the provisions of said chapter; and may exercise all the powers conferred on the sessions and grand jury under the said Acts.

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#### CHAPTER 147.

OF PETTY OFFENCES, TRESPASSES AND ASSAULTS.

*(As amended by Chapter 1, 1865, Section 15.)*

Sessions to make regulations respecting horses, &c., going at large.

11. The sessions shall make regulations for preventing trespasses by horses, asses, mules, cattle, sheep, swine or goats going at large.

Penalty for violating regulations.

12. Persons violating the regulations shall forfeit a sum not exceeding eight dollars.

13. Where a trespass has been committed by horses, asses, mules, cattle, sheep, swine or goats, and the damage alleged to have been suffered shall not exceed twelve dollars, the case may be tried before a justice of the peace in the same manner and with the like costs, and subject to appeal and other proceedings, as if it were an ordinary debt.

A justice to have jurisdiction over trespasses by horses, &c., to §12.

14. The justice shall grant replevin where required, upon security being given for prosecuting the same with effect within seven days.

Replevin may be granted by justice.

15. The writ of replevin shall be in the following form :—

Form of writ.

You are hereby commanded to replevy to A. B. his cattle, viz: (*here describe them*) which C. D. unjustly, as is alleged, detains under pretence of having committed a trespass not exceeding twelve dollars, and also to summon the said C. D. to appear before me at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, there to answer such things as shall be objected against him by the said A. B.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, A. D., one thousand eight hundred and \_\_\_\_\_.

E. F., J. P. (seal.)

16. The justice shall try the cause commenced by such writ, and give judgment with the like costs as in ordinary cases of debt and subject to the same further proceedings thereon.

Cause to be tried as in other cases.

17. If any person shall cut or carry away the soil or sods of any common whereby the pasturage shall be injured or the ground defaced, he shall forfeit a sum not exceeding four dollars.

Penalty for damaging or defacing a com mon.

18. If any person shall cut down or injure any trees planted for ornament or left growing on the side of any public square, street or highway, he shall forfeit for every such tree a sum not exceeding eight dollars; but no penalty shall attach for the removal of any such trees by a commissioner of streets or surveyor of highways.

Penalty for injuring ornamental trees on public roads.

19. If any person shall trespass in a cultivated enclosure he shall forfeit a sum not exceeding eight dollars for the use of the occupier of the land.

Penalty for trespassing on cultivated enclosures.

20. If any person shall illegally cut down or injure any tree growing on crown or private land, or shall illegally carry

Penalty for injury to trees.

away any such tree when cut down, he shall for every such tree forfeit a sum not to exceed eight dollars to the Commissioner of Crown Lands for the time being, for the use of the Province, or to the owner of the soil, as the case may be; but in no case shall the whole penalty exceed twenty dollars. No person imprisoned under execution issued upon any judgment for breach of this section shall be entitled to jail limits, or to the benefit of Chapter One hundred and thirty-seven of the Revised Statutes, Third Series, relating to insolvent debtors, until he shall have been imprisoned, if for the first offence, a period of five days, and for the second or subsequent offence a period of ten days.

The above penalties to be cumulative remedies. 21. Nothing in the two preceding sections contained shall take away from the party injured any right of action at law for the trespass committed.

Offences in Ss. 17, 18, 19 and 20, declared under jurisdiction of J. P's. 22. The offences enumerated in sections seventeen, eighteen, nineteen and twenty, are hereby declared to be under the jurisdiction of one or more justices of the peace, according to the amount of penalty sought to be recovered.

Two justices of the peace to have jurisdiction over assaults to §§. 23. Two justices of the peace may hear and determine in a summary way all complaints for common assaults and batteries; and upon conviction the offender shall forfeit a sum not exceeding eight dollars, to be paid over when recovered to the county treasurer; and the justices shall forthwith file the receipt of the county treasurer with the clerk of the peace.

Executions may be issued for fines and costs, and imprisonment may be ordered not exceeding thirty days. 24. If the fine and costs awarded shall not be paid forthwith, or within the time appointed for that purpose by the justices, the same may be levied by execution in the usual form, under which the offender may be imprisoned for a period not exceeding thirty days, unless the fine and costs be sooner paid.

Justices may dismiss complaint and give certificate accordingly. 25. If the justices upon the hearing shall deem the offence not proved, or so trifling as not to merit punishment, they may dismiss the complaint, and if required shall give the party acquitted a certificate accordingly.

Justices may give or withhold costs. 26. The justices may give costs either to complainant or defendant, or dismiss the complaint without costs on either side.

Where offence is aggravated justices may bind over parties to appear at supreme court. 27. If the offence charged be of an aggravated kind, or if upon the hearing the justices think the offender deserving a higher punishment than above prescribed, they may bind the offender over by recognizance to appear at

the next Supreme Court to answer the charge, and if necessary may also bind over the prosecutor to appear and prosecute, and the witnesses to give evidence.

28. If any person shall have obtained a certificate as above, or having been convicted shall have paid the whole amount adjudged, or shall have suffered the punishment awarded for non-payment thereof, he shall be thereby acquitted of all criminal proceedings for the same offence.

Compliance with the justice's judgment shall acquit from all further criminal proceedings.

29. Every prosecution under this Chapter shall be commenced within six months after the offence committed.

Limitation of prosecutions.

30. The justices shall proceed by summons in the form following:

Proceedings to be by summons; form given.

To any of the constables of the County of \_\_\_\_\_ :

You are hereby commanded to summon A. B., of \_\_\_\_\_, to appear before us at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_ next, to answer C. D. for a petty trespass (*or for a petty assault and battery, as the case may be*) committed on or about the \_\_\_\_\_ day of \_\_\_\_\_, contrary to the provisions of chapter One Hundred and forty-seven, Revised Statutes, Third Series.

Witness our hands at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

E. F., J. P. (seal.)  
G. H., J. P. (seal.)

31. The conviction under this Chapter shall be endorsed upon or annexed to the original summons in the form following:

Conviction to be endorsed or annexed to the summons; form given.

The within named C. D., having been duly summoned, was this day convicted of a petty trespass (*or a petty assault and battery, or a petty assault*) upon his own confession (*or upon default, or upon the oath of J. K., as the case may be, stating the manner of the party's conviction and the names of the witnesses examined*), and was thereupon fined the sum of \_\_\_\_\_, with costs, amounting in all to the sum of \_\_\_\_\_, to be paid forthwith (*or within \_\_\_\_\_ days next*.)

Witness our hands this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

E. F., J. P.  
G. H., J. P.

Which, when signed by the justices, shall be a valid record of such conviction.

32. If any person shall interrupt, molest or hinder any principal or deputy surveyor, or other person authorized by the Governor, the Commissioner of Crown Lands or a judge of the Supreme Court, while in the discharge of his duties as a surveyor, such person shall be guilty of a

Penalty for interfering with surveyor.

misdemeanor, and may be fined or imprisoned by any two justices of the peace, in their discretion; the imprisonment not to exceed thirty days, and the fine not to exceed twenty dollars.

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NOTE.—Sections 1 to 10 of this Chapter, both included, were repealed by C. 48, Canada, 1875.

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## CHAPTER 159.

### OF OFFENCES AGAINST RELIGION.

Fine for desecration of the Lord's day.

2. Any person who shall be convicted before a justice of the peace of shooting, gambling or sporting, of frequenting tippling houses, or of servile labor, works of necessity and mercy excepted, on the Lord's day, shall for every offence forfeit not less than one nor more than eight dollars, and in default of payment shall be committed to jail for a term not less than twelve hours nor more than four days.

Loosing or injuring horses, &c., in vicinity of certain meetings.

4. If any person shall wilfully or wantonly untie, remove or let loose, disfigure or injure any horse, or remove or meddle with, injure or destroy any vehicle, or cut, injure or destroy any harness connected with such horse or vehicle, while the same are in the vicinity of any place where such meeting (*i. e.* of persons lawfully convened for any religious, moral, social or benevolent purpose) may be in the act of being held, he shall for every offence forfeit a sum not less than five dollars, nor more than forty dollars.

Arrest and punishment of offenders.

5. Any person offending against the provisions of the fourth section of this Chapter, may be arrested on view by any peace officer present at such meeting, or by any other person thereto verbally authorized by any justice of the peace present thereat; and such offender shall thereupon be committed to the county jail until he shall find security to the satisfaction of a justice for his good behavior, and to pay any fine or penalty that may be imposed upon him on any prosecution for such offence.

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NOTE.—Sections 1 and 3 repealed by Chapter 23, Canada, 1869.

## CHAPTER 160.

## OF OFFENCES AGAINST PUBLIC MORALS.

1. Any person who shall be convicted of drunkenness either on view or upon oath before a justice of the peace, shall for every offence forfeit not less than one nor more than four dollars, and in default of payment shall be committed to jail for a term not less than twelve hours nor more than four days. Fine for drunkenness.

2. Any person who shall be convicted of incest shall be guilty of a misdemeanor, and shall be imprisoned for a term not exceeding two years. Punishment for incest.

3. Any person who shall be convicted of keeping a common gambling house, bawdy house or other disorderly house, room or place; shall be imprisoned for a term not exceeding two years. Punishment for keeping a gambling, bawdy, or disorderly house

4. Any person who shall appear or act as master or mistress, or as having the care or management of any gambling house, bawdy house or other disorderly house, shall be deemed to be the keeper thereof, and shall be prosecuted and punished as such, notwithstanding he or she shall not in fact be the real owner or keeper thereof. Who may be deemed keeper of such house.

5. Any person who shall keep a common gambling house, or disorderly house, shop, room or place, may be summarily tried and convicted before two justices of the peace, or, if in the City of Halifax, before the police court; and, on conviction, shall be punished by a fine, not to exceed twenty dollars, or by imprisonment in jail or bridewell, with or without hard labor, for a term not exceeding one month, or be both fined and imprisoned, as the said justices or police court may direct. Trial and punishment of offenders

6. Any justice of the peace, or, if in the City of Halifax, the mayor or any alderman, may, at any time of the night or day, enter any house, shop, room or place, suspected of being a gambling or bawdy house, shop, room or place; and it shall be their duty, upon reasonable suspicion, or on evidence tendered them under oath, so to do. Any justice, &c., may enter gambling houses, &c.

7. Any person profanely cursing or swearing in the hearing of a justice of the peace, or who shall be convicted thereof, shall forfeit forty cents for the first offence, and for a second offence double, and for a third offence treble that sum; and in default of payment shall be committed to jail for a term not less than two nor more than twelve hours. Fine for profane swearing.

8. Whoever shall undertake or set up, or shall by writing or printing, publish the undertaking or setting up of any lottery or raffle for money or goods, with intent to Fine for getting up or participating in lotteries or raffles.



have such lottery or raffle drawn or thrown, or to induce persons to purchase tickets or to give money or other valuables for any such lottery or raffle, or shall play, throw or draw at such lottery or raffle, or shall purchase any lot or ticket for any such lottery, or shall take part in any such raffle, shall forfeit a sum not exceeding forty dollars; and in default of payment shall be committed to jail for a period not exceeding thirty days.

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## CHAPTER 162.

### OF OFFENCES AGAINST THE PUBLIC PEACE.

*(As amended by Chapter 12, 1869.)*

Punishment where three or more persons unlawfully assemble or continue assembled.

5. If three or more persons shall assemble, or having assembled shall continue together, with intent without lawful authority to execute any common purpose with force and violence, or in so violent and tumultuous a manner, or under such circumstances as are calculated to create terror and alarm amongst Her Majesty's subjects, such persons shall be imprisoned for a term not exceeding two years.

Punishment for unlawful assemblages damaging churches or machinery.

6. If any persons unlawfully assembled together to the disturbance of the public peace, shall damage or destroy any church, chapel or meeting house for the exercise of religious worship, or any building or erection, or any machinery, whether fixed or movable, prepared for or employed in any manufacture, such offenders shall be imprisoned for any term not exceeding two years.

Punishment for public fighting.

7. If two or more persons shall fight together in a public place, in such a manner and under such circumstances as are calculated to create terror and alarm amongst Her Majesty's subjects, such persons shall be committed to jail for a term not exceeding three months.

Punishment for carrying dangerous weapons.

8. If two or more persons shall openly carry dangerous and unusual weapons in any public place, in such a manner and under such circumstances as are calculated to create terror and alarm amongst Her Majesty's subjects, such persons shall be committed to jail for a term not exceeding twelve months.

Riotous or disorderly conduct in streets or highways.

9. If any person shall, by discharging fire-arms, or by riotous or disorderly conduct in any street or highway, wantonly or maliciously disturb the peace and quiet of the inmates of any dwelling house near such street or highway, he shall for every offence forfeit a sum not less than two dollars nor more than eight dollars.

10. No persons shall stand in a group or near to each other on any street or sidewalk in such manner as to obstruct a free passage for foot passengers, under a penalty of not less than fifty cents nor more than two dollars; and any person refusing or neglecting to remove from or to cease to obstruct such street or sidewalk, after the request of a constable, shall be liable to a like penalty.

Penalty for obstructing street or sidewalk.  
[C. 12, 1869, s. 1.]

11. Any person who, being on any street, lane, thoroughfare or sidewalk, shall openly use any profane, obscene, lewd or lascivious language or behaviour, may be forthwith taken into custody, by day or by night, by any constable, and shall be liable to a fine of not less than one dollar nor more than four dollars, and in case of non-payment to imprisonment for a period not exceeding ten days.

Penalty for using obscene language, &c., on thoroughfare.  
[C. 12, 1869, s. 2.]

12. Any person, being on any street, lane, thoroughfare or sidewalk, who shall openly challenge any person to fight, or shall use abusive or provoking language, may be forthwith arrested by any constable; and shall be subject to a fine of not less than one dollar nor more than four dollars, and in case of non-payment to imprisonment for a period not exceeding ten days.

Penalty for challenging to fight, &c.  
[C. 12, 1869, s. 3.]

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NOTE.—Sections 1, 2, 3 and 4 repealed by Chapter 36, Canada, 1869. See also Chapter 30, Canada, 1877.

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## CHAPTER 171.

### OF THE ADMINISTRATION OF CRIMINAL JUSTICE IN THE SUPREME COURT.

59. Any person that shall hereafter be committed to jail for any offence or misdemeanor, having means or ability thereunto, shall bear his own reasonable charges for conveying or sending him to jail, and the charges also of such as shall be appointed to guard him and shall so guard him thither; and if any person shall refuse to defray such charges, then a justice of the peace, by writing under his hand and seal, shall give warrant to any constable to sell so much of the goods and chattels of the said person so to be committed as by the discretion of the said justice shall satisfy and pay the charge of his conveying and sending to the jail, the appraisement to be made by two inhabitants of the town or place where such goods or chattels shall be, and the overplus of the money which shall be made thereof

Charges of conveying prisoners to jail to be defrayed by themselves when of ability; proceedings to recover the same.

to be delivered to the party to whom such goods shall belong.

Constable's ex-  
penses, how al-  
lowed and paid.

60. If the person so to be committed shall not have or be known to have any goods or chattels which may be sold for such purpose, then the said justice, on application by any constable or other officer who so conveyed such person to jail, shall upon oath examine into and ascertain the reasonable expenses to be allowed such constable or other officer, and shall forthwith, without fee, by warrant under his hand and seal, order the treasurer of the county to pay the same, which the treasurer is hereby required to do as soon as he receives such warrant, and any sum so paid shall be allowed in his accounts.

Expenses of poor  
witnesses, how  
paid.

61. When any poor person shall appear on recognizance in any court, to give evidence against another accused of any felony or misdemeanor, it shall be in the power of the court, if it shall think fit, at the prayer and on the oath of such person, and on consideration of his circumstances, in open court to order the treasurer of the county in which the offence shall have been committed, to pay unto such person such sum of money as to the court shall seem reasonable for his time, trouble and expense; which order the proper officer shall make out and deliver unto such person, upon being paid for the same the sum of ten cents and no more; and such treasurer is hereby required, upon delivery of such order, forthwith to pay to such person or other person authorized to receive the same, such sum of money as aforesaid, and shall be allowed the same in his accounts.

Where county  
treasurer has no  
funds, expenses  
paid out of the  
public treasury.

62. In case such treasurer shall not have any money in his hands to pay the sum so ordered for conveying poor prisoners to jail, or for the attendance of witnesses, the same shall be paid out of the public treasury of the Province.

Fees on criminal  
trials for wit-  
nesses on the  
part of the pro-  
secution.

63. All witnesses on criminal trials attending on the part of the prosecution, shall be entitled, under the sanction of the court or a judge, to receive from the county treasurer the same fees for their travel and actual attendance as witnesses in civil suits are now entitled to receive; such fees to be paid on the certificate of the Attorney-General, Queen's Counsel, or officer appointed by a judge to conduct such prosecution, that such witnesses duly attended under subpoena and gave evidence at such trials, and are entitled to receive therefor the amount therein stated; and such subpoenas shall be produced on taxation.

County treasurer  
to pay the  
amount.

64. The county treasurer is required, upon the delivery of the prothonotary's certificate, to pay the amount of the fees mentioned therein.

65. Whenever, in the absence of the Attorney-General, it shall appear to the court expedient and necessary to appoint any one counsel to conduct and manage on behalf of Her Majesty the proceedings and trial of any criminal prosecutions pending before the court, it shall be lawful for the court to direct any Queen's counsel present therein, or, in his absence, to appoint from among the barristers attending thereat, some one competent person to conduct and manage such proceedings, and to tax and allow to him for his services such reasonable fees as he would have been entitled to for the like services as the attorney of any party in a civil action, together with such reasonable counsel fees not exceeding for any one prosecution the sum of twenty dollars, as the court shall deem adequate to the services performed on such prosecution. But the costs to be taxed shall in no case exceed thirty dollars for all writings and papers and for all counsel fees therein; and on the allowance and taxation the court shall not allow for any but necessary services and expenses, and notice of the time and taxation shall be given to the clerk of the Crown or his deputy.

In the absence of the attorney-general the court shall appoint officers to prosecute on behalf of the crown; costs, how taxed.

66. Upon the production of a certificate under the seal of the court of the amount so taxed and allowed, it shall be lawful for the Governor to grant his warrant therefor upon the Receiver General, who shall pay the amount.

Costs taxed, how paid.

67. In all cases where the party prosecuted shall be convicted and be found by the court of ability to pay the expenses of prosecution, to be taken under this Chapter, the court shall adjudge such defendant to pay the expenses of prosecution, and shall issue execution accordingly, and the amount shall be paid to the Receiver General.

Party convicted if of ability, may be adjudged to pay the expenses of prosecution.

75. A judge of the Supreme Court may sentence convicted criminals, on any day of the sittings at Halifax as well as in term time.

Criminals may be sentenced during sittings at Halifax.

86. The Governor-in-Council may order a special sitting of the Supreme Court in any of the counties of this Province for the trial of prisoners charged with felonies.

Special sittings of Supreme Court for trial of prisoners.

87. Such order shall appoint a particular day when the court shall be held, and shall be published in the *Royal Gazette* for at least three weeks before the day appointed for the opening of the court. Immediately upon the order being made, the clerk of the Executive Council shall transmit copies thereof to the chief justice, and to the prothonotary and to the sheriff of the county wherein the special sitting of the court is to be held.

Order to be published in the *Royal Gazette* for three weeks previous, &c.

88. Upon the receipt of the order by the prothonotary, he shall issue venirens for the grand and petit juries to meet at the time specified therein, and the sheriff shall immediately summon such juries, with constables and

Summoning jurors and necessary officers.

other officers whose attendance is required at such sitting, who shall be liable to the same penalties for non-attendance as when summoned to attend the ordinary terms or sittings of the court.

Presiding judge. Proceedings to have same force as if had at ordinary terms or sittings.

89. Any judge of the Supreme Court may preside at such special sitting; and all trials, judgments and proceedings thereat shall have the same force and effect as if such trials, judgments and proceedings had taken place at one of the ordinary terms or sittings of the court.

Presiding judge may adjourn sittings.

90. The presiding judge may adjourn the sittings from day to day as occasion may require.

Extended to trials for misdemeanors.

91. The provisions of the last five sections may be extended to the trials of criminals charged with misdemeanors.

Upon proof of handwriting of justice who has issued a warrant for felony against person escaped into this Province, a justice here may endorse warrant, which shall be sufficient authority to arrest the party and take him into the province where warrant issued.

94. If any person against whom a warrant may be issued by the Chief Justice of the Queen's bench, or Supreme Court, or by any other justice having competent authority, in any of Her Majesty's provinces or governments in North America respectively, for any felony or other crime of a high nature, escapes into or is found in any part of Nova Scotia, any justice of the peace of the county, city or place where such person resides or is supposed to be, may, upon due proof being made of the handwriting of such chief or other justice who issued the warrant, endorse his, the said justice's, name thereon; and such warrant so endorsed shall be a sufficient authority to all persons to whom such warrant was originally directed, and also to all constables and policemen of the county, city or place where such warrant has been so endorsed, to execute the same by apprehending the person or persons against whom such warrant has been granted, and to convey him or them into the province or government from which such warrant was originally issued, to be dealt with according to law.

Judge may direct imprisonment in penitentiary or common jail.

95. In all cases where an offender is made liable to imprisonment under any statute of this province, the judges of the Supreme Court may direct the imprisonment to be in the provincial penitentiary, or in the common jail of the county, at their discretion; but if the judge shall direct the imprisonment to be in the common jail, such imprisonment shall not extend beyond the period of six months.

All fines, &c., to be paid to county treasurer. [See c. 22, 1869, s. 12.]

96. All fines and forfeitures levied and collected by the judgment of the Supreme Court in any of the counties of this province, shall be paid into the hands of the county treasurer for such counties respectively.

How applied.

97. The fines and forfeitures so paid to the county treasurer shall be paid and applied by him towards the payment of witnesses attending criminal trials, and also witnesses attending prosecutions for offences committed against the

provisions of the first and second sections of Chapter One hundred and sixty-three of the Revised Statutes, Third Series, "Of Offences against the Administration of Justice," under the same rules and regulations as provided by the Act hereby amended.

98. Witnesses for the prosecution attending before the grand jury in criminal cases, and witnesses for the prosecution attending on the trial of indictments, shall be entitled to fees, as prescribed by section sixty-three of this Chapter, notwithstanding that such attendance may not have been under subpoena or recognizance; provided that the court or a judge shall be satisfied by affidavit that there was reasonable ground for instituting the proceedings, and that the attendance of the witnesses was material and necessary, and that they attended expressly to give such evidence, and for no other purpose.

Witnesses entitled to fees.

Proviso.

99. When a person has been convicted of criminal treason, felony or misdemeanor, before any court of oyer and terminer or jail delivery, the judge before whom the case was tried may, in his discretion, reserve any questions of law which arose on the trial, for the consideration of the justices of the Supreme Court at Halifax; and thereupon may respite execution of the judgment on such conviction, or postpone the judgment until such question has been considered and decided; and in either case the court at which the trial took place shall, in its discretion, commit the person convicted to prison, or take a recognizance of bail, with one or two sufficient surety or sureties in such sums as the court thinks fit, conditioned for his appearance at such time as the court directs, to receive judgment, or to render himself in execution, as the case may be.

Judge may reserve questions of law.

Proceedings when question reserved.

100. The judge shall thereupon state, in a case to be signed by him, the question or questions of law so reserved, with the special circumstances upon which the same arose; and such case shall be transmitted by the judge to the prothonotary of the Supreme Court at Halifax, on or before the first day of the term of such Supreme Court at Halifax next after the time when such trial was had.

Judge shall state and sign case to be sent to Halifax.

101. The justices of the Supreme Court shall hear and finally determine the said questions, and reverse, affirm or amend any judgment given on the indictment or inquisition on the trial whereof such questions arose, or shall avoid such judgment, or order an entry to be made on the record that in the judgment of the said justices the party convicted ought not to have been convicted, or shall arrest the judgment; or if no judgment has been given, shall order judgment to be given thereon at some future session of oyer and terminer, or jail delivery, or shall make such other order as justice may require.

Supreme Court shall hear same and make order thereon.

Judgment and order to be certified and sent to sheriff.

102. The judgment and order of the said justices shall be certified under the hand of the chief justice or senior judge of such court to the clerk of the crown of the county in which the trial took place, who shall enter the same on the original record in proper form; and a certificate of such entry, under the hand of the clerk of the crown, in the form as near as may be, or to the effect mentioned in the schedule annexed to this Chapter, with the necessary alterations to adapt it to the circumstances of the case, shall be delivered or transmitted by him to the sheriff or jailer in whose custody the person convicted is; and the said certificate shall be sufficient warrant to such sheriff or jailer, and all other persons, for the execution of the judgment as so certified to have been affirmed or amended, and execution shall thereupon be executed on such judgment; or if the judgment has been reversed, avoided or arrested, the person convicted shall be discharged from further imprisonment, and the next court of oyer and terminer or jail delivery, shall vacate the recognizance of bail, if any.

Sheriff to act in accordance therewith.

Judgments, how delivered.

103. The judgment of the justices of the said Supreme Court shall be delivered in open court, after hearing counsel or the parties, in case the prosecutor or person convicted thinks it fit the case should be argued, in like manner as the judgments of the said Supreme Court are delivered.

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#### SCHEDULE.

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Whereas at the Supreme Court for the County of \_\_\_\_\_, held on \_\_\_\_\_, before the Honorable \_\_\_\_\_, one of the justices of the said court, A. B., late of \_\_\_\_\_, having been found guilty of felony and judgment thereon given, that (*state the substance*) the court before whom he was tried reserved a certain question of law for the consideration of the justices of the Supreme Court at Halifax, and execution was thereupon respited in the meantime (*as the case may be*): This is to certify that the justices of the Supreme Court at Halifax, having met at Halifax in \_\_\_\_\_ term, it was considered by the said justices there that the judgment aforesaid should be annulled, and an entry made on the record that the said A. B. ought not, in the judgment of the said justices, to have been convicted of the felony aforesaid; and you are hereby required forthwith to discharge the said A. B. from your custody.

(Signed) E. F.

*Enactments not forming part of the Third Series  
of the Revised Statutes.*

**CHAPTER 82 OF THE REVISED STATUTES, SECOND  
SERIES.**

OF INTEREST.

2. Any person may, nevertheless, contract for the loan or hire of grain or live stock, upon halves or otherwise, upon the lender taking upon himself all risk of such stock; but if it shall appear that the same or any part thereof perished or was lost through the wilful neglect of the borrower, he shall make good to the lender the full value thereof.

Contracts respecting grain or live stock excepted.

4. Upon all debts or sums certain payable at a certain time, or otherwise, the jury, and the court where there is no jury, on the trial of any issue or inquisition of damages, may if they think fit allow interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing, such demand giving notice to the debtor that interest will be claimed from the date thereof.

Interest may be allowed in certain cases for delay of payment.

5. The jury on the trial of any issue, or on any inquisition of damages, may if they shall think fit give damages in the nature of interest above the value of the goods at the time of the conversion or seizure in all actions of trover or trespass *de bonis asportatis*, and above the money recoverable in all actions on policies of insurance.

Damages in the nature of interest may be allowed in certain actions

NOTE.—Sections 1, 3 and 6 repealed by Chapter 71, Canada, 1873, s. 5.

**CHAPTER 17 OF THE ACTS OF 1866;**

ENTITLED, "AN ACT TO ENFORCE THE TAKING OF THE  
OATH OF ALLEGIANCE."

1. Whenever any person above the age of sixteen years shall refuse to take the oath of allegiance, when required by law to do so, in order to qualify himself for any office, the duties of which he is by law required to

Any person above 16 refusing to take oath of allegiance, guilty of misdemeanor, and liable to imprisonment.



perform, he shall be guilty of a misdemeanor, and shall be liable to be imprisoned for any term not exceeding six months.

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NOTE.—The remainder of this Act repealed by Chapter 40, Canada, 1868, s. 99.

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## CHAPTER 22 OF THE ACTS OF 1879;

### ENTITLED, "AN ACT RESPECTING ESTREATS."

Sheriff to pay  
over money  
received.

Sec. 12. The sheriff shall without delay pay over all money by him collected to the officer or person entitled to receive such money under section 96 of chapter 171 of the Revised Statutes, third series, and the same shall be appropriated in the manner mentioned in section 97 of said chapter.

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## APPENDIX B.

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*The Act of the Imperial Parliament, 30°  
and 31° Victoria, Chapter 3, known  
as "The British North America Act,  
1867."*

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30° and 31° Victoriae.

CHAPTER 3.

AN ACT FOR THE UNION OF CANADA, NOVA SCOTIA, AND  
NEW BRUNSWICK, AND THE GOVERNMENT THEREOF;  
AND FOR PURPOSES CONNECTED THEREWITH.

*29th March, 1867.*

Whereas, the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in principle to that of the United Kingdom :

And whereas such a Union would conduce to the welfare of the Provinces and promote the interests of the British Empire ;

And whereas on the establishment of the Union by authority of Parliament it is expedient, not only that the Constitution of the Legislative Authority in the Dominion be provided for, but also that the nature of the Executive Government therein be declared :

And whereas it is expedient that provision be made for the eventual admission into the Union of other parts of British North America :

Be it therefore enacted and declared by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows :—

I.—PRELIMINARY.

1. This Act may be cited as The British North America Act, 1867. Short title.

2. The provisions of this Act referring to Her Majesty the Queen extend also to the Heirs and Successors of Her Majesty, Kings and Queens of the United Kingdom of Great Britain and Ireland. Application of provisions referring to the Queen.

II.—UNION.

[3.]\* It shall be lawful for the Queen, by and with the advice of Her Majesty's most Honorable Privy Council, to Declaration of Union.

\* Wherever in this Act the figure denoting the number of any section or sub-section is placed between brackets, thus [3], it is thereby indicated that the provisions of such section or sub-section have been either completely and finally complied with, or altered or superseded.

declare by proclamation that, on and after a day therein appointed, not being more than six months after the passing of this Act, the Provinces of Canada, Nova Scotia and New Brunswick, shall form and be One Dominion, under the name of Canada; and on and after that day those three Provinces shall form and be One Dominion under that name accordingly.

Construction of subsequent provisions of Act.

4. The subsequent provisions of this Act shall, unless it is otherwise expressed or implied, commence and have effect on and after the Union, that is to say, on and after the day appointed for the Union taking effect in the Queen's proclamation; and in the same provisions, unless it is otherwise expressed or implied, the name Canada shall be taken to mean Canada as constituted under this Act.

Four Provinces.

[5.] Canada shall be divided into four Provinces, named Ontario, Quebec, Nova Scotia and New Brunswick.

Provinces of Ontario and Quebec.

[6.] The parts of the Province of Canada (as it exists at the passing of this Act) which formerly constituted respectively the Provinces of Upper Canada and Lower Canada, shall be deemed to be severed, and shall form two separate Provinces. The part which formerly constituted the Province of Upper Canada shall constitute the Province of Ontario; and the part which formerly constituted the Province of Lower Canada shall constitute the Province of Quebec.

Provinces of Nova Scotia & New Brunswick.

7. The Provinces of Nova Scotia and New Brunswick shall have the same limits as at the passing of this Act.

Decennial census.

8. In the general census of the population of Canada which is hereby required to be taken in the year one thousand eight hundred and seventy-one, and in every tenth year thereafter, the respective populations of the four Provinces shall be distinguished.

### III.—EXECUTIVE POWER.

Declaration of executive power in the Queen.

9. The Executive Government and authority of and over Canada is hereby declared to continue and be vested in the Queen.

Application of provisions referring to Governor-General.

10. The provisions of this Act referring to the Governor-General extend and apply to the Governor-General for the time being of Canada, or other the chief Executive Officer or Administrator for the time being carrying on the Government of Canada on behalf and in the name of the Queen, by whatever title he is designated.

Constitution of Privy Council for Canada.

11. There shall be a council to aid and advise in the Government of Canada, to be styled the Queen's Privy Council for Canada; and the persons who are to be

members of that council shall be from time to time chosen and summoned by the Governor-General, and sworn in as Privy Councillors; and members thereof may be from time to time removed by the Governor-General.

12. All powers, authorities, and functions which, under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, Canada, Nova Scotia or New Brunswick, are at the Union vested in or exercisable by the respective Governors or Lieutenant-Governors of those Provinces, with the advice, or with the advice and consent of the respective Executive Councils thereof, or in conjunction with those councils, or with any number of members thereof, or by those Governors or Lieutenant-Governors individually, shall, as far as the same continue in existence and capable of being exercised after the Union in relation to the Government of Canada, be vested in and exercisable by the Governor-General, with the advice or with the advice and consent of or in conjunction with the Queen's Privy Council for Canada, or any members thereof, or by the Governor-General individually, as the case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland) to be abolished or altered by the Parliament of Canada.

All powers under Acts to be exercised by Governor-General with advice of Privy Council or alone.

13. The provisions of this Act referring to the Governor-General-in-Council shall be construed as referring to the Governor-General acting by and with the advice of the Queen's Privy Council for Canada.

Application of provisions referring to Governor-General-in-Council.

14. It shall be lawful for the Queen, if Her Majesty thinks fit, to authorize the Governor-General from time to time to appoint any person or any persons jointly or severally to be his deputy or deputies within any part or parts of Canada, and in that capacity to exercise during the pleasure of the Governor-General such of the powers, authorities, and functions of the Governor-General as the Governor-General deems it necessary or expedient to assign to him or them, subject to any limitations or directions expressed or given by the Queen; but the appointment of such a deputy or deputies shall not affect the exercise by the Governor-General himself of any power, authority, or function.

Power to Her Majesty to authorize Governor-General to appoint deputies.

15. The command in chief of the Land and Naval Militia, and of all Naval and Military Forces, of and in Canada, is hereby declared to continue and be vested in the Queen.

Command of armed forces to continue to be vested in the Queen.

Seat of Govern- 16. Until the Queen otherwise directs the seat of  
ment of Canada. Government of Canada shall be Ottawa.

## IV.—LEGISLATIVE POWER.

Constitution of 17. There shall be one Parliament for Canada, consisting  
Parliament of of the Queen, an Upper House styled the Senate, and the  
Canada. House of Commons.

Privileges, &c., [18] The privileges, immunities, and powers to be held,  
of Houses. enjoyed, and exercised by the Senate and by the House of  
Commons and by the members thereof respectively, shall  
be such as are from time to time defined by Act of the  
Parliament of Canada, but so that the same shall never  
exceed those at the passing of this Act held, enjoyed, and  
exercised by the Commons House of Parliament of the  
United Kingdom of Great Britain and Ireland and by the  
members thereof.

First session of [19.] The Parliament of Canada shall be called together  
the Parliament not later than six months after the Union.  
of Canada.

Yearly session of 20. There shall be a session of the Parliament of Canada  
the Parliament once at least in every year, so that twelve months shall not  
of Canada. intervene between the last sitting of the Parliament in one  
session and its first sitting in the next session.

*The Senate.*

Number of 21. The Senate shall, subject to the provisions of this  
Senators. Act, consist of seventy-two members, who shall be styled  
Senators.

Representation 22. In relation to the constitution of the Senate, Canada  
of Provinces in shall be deemed to consist of three divisions—  
Senate.

1. Ontario ;

2. Quebec ;

3. The Maritime Provinces, Nova Scotia and New Brunswick ; which three divisions shall (subject to the provisions of this Act) be equally represented in the Senate as follows:—Ontario by twenty-four Senators ; Quebec by twenty-four Senators ; and the Maritime Provinces by twenty-four Senators, twelve thereof representing Nova Scotia, and twelve thereof representing New Brunswick.

In the case of Quebec each of the twenty-four Senators representing that Province shall be appointed for one of the twenty-four Electoral Divisions of Lower Canada specified in Schedule A to Chapter One of the Consolidated Statutes of Canada.

23. The qualifications of a Senator shall be as follows:— Qualifications of Senator.

1. He shall be of the full age of thirty years :
2. He shall be either a natural born subject of the Queen, or a subject of the Queen naturalized by an Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of one of the Provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, before the Union, or of the Parliament of Canada after the Union :
3. He shall be legally or equitably seised as of freehold for his own use and benefit of lands or tenements held in free and common socage, or seised or possessed for his own use and benefit of lands or tenements held in franc-alieu or in roture, within the Province for which he is appointed, of the value of four thousand dollars, over and above all rents, dues, debts, charges, mortgages and encumbrances due or payable out of or charged on or affecting the same :
4. His real and personal property shall be together worth four thousand dollars over and above his debts and liabilities :
5. He shall be resident in the Province for which he is appointed :
6. In the case of Quebec he shall have his real property qualification in the Electoral Division for which he is appointed, or shall be resident in that Division :

24. The Governor-General shall, from time to time, in the Queen's name, by instrument under the Great Seal of Canada, summon qualified persons to the Senate; and subject to the provisions of this Act, every person so summoned shall become and be a member of the Senate and a Senator. Summons of Senator.

[25.] Such persons shall be first summoned to the Senate as the Queen by warrant under Her Majesty's Royal Sign Manual thinks fit to approve, and their names shall be inserted in the Queen's Proclamation of Union. Summons of first body of Senators.

26. If at any time on the recommendation of the Governor-General the Queen thinks fit to direct that three or six members be added to the Senate, the Governor- Addition of Senators in certain cases.



General may by summons to three or six qualified persons (as the case may be) representing equally the three divisions of Canada, add to the Senate accordingly.

Reduction of Senate to normal number.

27. In case of such addition being at any time made, the Governor-General shall not summon any person to the Senate, except on a further like direction by the Queen on the like recommendation, until each of the three divisions of Canada is represented by twenty-four Senators and no more.

Maximum number of Senators.

28. The number of Senators shall not at any time exceed seventy-eight.

Tenure of place in Senate.

29. A Senator shall, subject to the provisions of this Act, hold his place in the Senate for life.

Resignation of place in Senate.

30. A Senator may by writing under his hand addressed to the Governor-General resign his place in the Senate, and thereupon the same shall be vacant.

Disqualification of Senators.

31. The place of a Senator shall become vacant in any of the following cases:—

1. If for two consecutive sessions of the Parliament he fails to give his attendance in the Senate :
2. If he takes an oath or makes a declaration or acknowledgment of allegiance, obedience, or adherence to a foreign power, or does an act whereby he becomes a subject or citizen, or entitled to the rights or privileges of a subject or citizen, of a foreign power :
3. If he is adjudged bankrupt or insolvent, or applies for the benefit of any law relating to insolvent debtors, or becomes a public defaulter :
4. If he is attainted of treason or convicted of felony, or of any infamous crime :
5. If he ceases to be qualified in respect of property or of residence ; provided that a Senator shall not be deemed to have ceased to be qualified in respect of residence by reason only of his residing at the seat of the Government of Canada while holding an office under that Government requiring his presence there.

Summons on vacancy in Senate.

32. When a vacancy happens in the Senate by resignation, death, or otherwise, the Governor-General shall by summons to a fit and qualified person fill the vacancy.

Questions as to qualifications and vacancies in Senate.

33. If any question arises respecting the qualification of a Senator or a vacancy in the Senate, the same shall be heard and determined by the Senate.

34. The Governor-General may from time to time, by <sup>Appointment of Speaker of Senate.</sup> instrument under the Great Seal of Canada, appoint a Senator to be Speaker of the Senate, and may remove him and appoint another in his stead.

35. Until the Parliament of Canada otherwise provides, <sup>Quorum of Senate.</sup> the presence of at least fifteen Senators, including the Speaker, shall be necessary to constitute a meeting of the Senate for the exercise of its powers.

36. Questions arising in the Senate shall be decided <sup>Voting in Senate.</sup> by a majority of voices, and the Speaker shall in all cases have a vote; and when the voices are equal the decision shall be deemed to be in the negative.

### *The House of Commons.*

[37.] The House of Commons shall, subject to the <sup>Constitution of House of Commons in Canada.</sup> provisions of this Act consist of one hundred and eighty-one members, of whom eighty-two shall be elected for Ontario, sixty-five for Quebec, nineteen for Nova Scotia, and fifteen for New Brunswick.

38. The Governor-General shall from time to time, in <sup>Summoning of House of Commons.</sup> the Queen's name, by instrument under the Great Seal of Canada, summon and call together the House of Commons.

39. A Senator shall not be capable of being elected or <sup>Senators not to sit in House of Commons.</sup> of sitting or voting as a member of the House of Commons.

[40.] Until the Parliament of Canada otherwise <sup>Electoral districts of the four provinces.</sup> provides, Ontario, Quebec, Nova Scotia and New Brunswick shall, for the purposes of the election of members to serve in the House of Commons, be divided into electoral districts, as follows:—

#### [1.]—ONTARIO.

Ontario shall be divided into the counties, ridings of counties, cities, parts of cities, and towns enumerated in the first schedule to this Act, each whereof shall be an electoral district, each such district as numbered in that schedule being entitled to return one member.

#### [2.]—QUEBEC.

Quebec shall be divided into sixty-five electoral districts, composed of the sixty-five electoral divisions into which Lower Canada is at the passing of this Act divided under Chapter Two of the Consolidated Statutes of Canada, Chapter Seventy-five of the Consolidated Statutes for Lower Canada, and the Act of the Province of Canada of the twenty-third year of the Queen, Chapter One, or any other

Act amending the same in force at the Union, so that each such electoral division shall be for the purposes of this Act an electoral district entitled to return one member.

[3.]—NOVA SCOTIA.

Each of the eighteen counties of Nova Scotia shall be an electoral district. The County of Halifax shall be entitled to return two members, and each of the other counties one member.

[4.]—NEW BRUNSWICK.

Each of the fourteen counties into which New Brunswick is divided, including the City and County of St. John, shall be an electoral district. The City of St. John shall also be a separate electoral district. Each of those fifteen electoral districts shall be entitled to return one member.

Continuance of existing election laws until Parliament of Canada otherwise provides.

[41.] Until the Parliament of Canada otherwise provides, all laws in force in the several provinces at the union relative to the following matters or any of them, namely,—the qualifications and disqualifications of persons to be elected or to sit and vote as members of the House of Assembly or Legislative Assembly in the several provinces, the voters at elections of such members, the oaths to be taken by voters, the returning officers, their powers and duties, the proceedings at elections, the periods during which elections may be continued, the trial of controverted elections and proceedings incident thereto, the vacating of seats of members, and the execution of new writs in case of seats vacated otherwise than by dissolution,—shall respectively apply to elections of members to serve in the House of Commons for the same several provinces.

Provided that, until the Parliament of Canada otherwise provides, at any election for a member of the House of Commons for the district of Algoma, in addition to persons qualified by the law of the Province of Canada to vote, every male British subject, aged twenty-one years or upwards being a house-holder, shall have a vote.

Writs for first election.

[42.] For the first election of members to serve in the House of Commons, the Governor-General shall cause writs to be issued by such person, in such form, and addressed to such returning officers, as he thinks fit.

The person issuing writs under this section shall have the like powers as are possessed at the union by the officers charged with the issuing of writs for the election of members to serve in the respective House of Assembly or Legislative Assembly of the Province of Canada, Nova

Scotia, or New Brunswick; and the returning officers to whom writs are directed under this section shall have the like powers as are possessed at the union by the officers charged with the returning of writs for the election of members to serve in the same respective House of Assembly or Legislative Assembly.

[43.] In case a vacancy in the representation in the House of Commons of any electoral district happens before the meeting of the parliament, or after the meeting of the parliament before provision is made by the parliament in this behalf, the provisions of the last foregoing section of this Act shall extend and apply to the issuing and returning of a writ in respect of such vacant district.

As to casual vacancies.

44. The House of Commons on its first assembling after a general election shall proceed with all practicable speed to elect one of its members to be Speaker.

As to election of Speaker of House of Commons.

45. In case of a vacancy happening in the office of Speaker by death, resignation or otherwise, the House of Commons shall with all practicable speed proceed to elect another of its members to be Speaker.

As to filling up vacancy in office of Speaker.

46. The Speaker shall preside at all meetings of the House of Commons.

Speaker to preside.

47. Until the Parliament of Canada otherwise provides, in case of the absence for any reason of the Speaker from the chair of the House of Commons for a period of forty-eight consecutive hours, the House may elect another of its members to act as Speaker, and the member so elected shall, during the continuance of such absence of the Speaker, have and execute all the powers, privileges and duties of Speaker.

Provision in case of absence of Speaker.

48. The presence of at least twenty members of the House of Commons shall be necessary to constitute a meeting of the House for the exercise of its powers; and for that purpose the Speaker shall be reckoned as a member.

Quorum of House of Commons.

49. Questions arising in the House of Commons shall be decided by a majority of voices other than that of the Speaker; and when the voices are equal, but not otherwise, the Speaker shall have a vote.

Voting in House of Commons.

50. Every House of Commons shall continue for five years from the day of the return of the writs for choosing the House (subject to be sooner dissolved by the Governor-General), and no longer.

Duration of House of Commons.

51. On the completion of the census in the year One thousand eight hundred and seventy-one, and of each subsequent decennial census, the representation of the four provinces shall be readjusted by such authority, in such manner, and from such time, as the Parliament of Canada

Decennial re-adjustment of representation.

from time to time provides, subject and according to the following rules:—

1. Quebec shall have the fixed number of sixty-five members :
2. There shall be assigned to each of the other provinces such a number of members as will bear the same proportion to the number of its population (ascertained at such census) as the number sixty-five bears to the number of the population of Quebec (so ascertained):
3. In the computation of the number of members for a province a fractional part not exceeding one half of the whole number requisite for entitling the province to a member shall be disregarded ; but a fractional part exceeding one half of that number shall be equivalent to the whole number :
4. On any such readjustment the number of members for a province shall not be reduced unless the proportion which the number of the population of the province bore to the number of the aggregate population of Canada at the then last preceding re-adjustment of the number of members for the province is ascertained at the then latest census to be diminished by one twentieth part or upwards :
5. Such readjustment shall not take effect until the termination of the then existing parliament.

Increase of number of House of Commons.

52. The number of members of the House of Commons may be from time to time increased by the Parliament of Canada ; provided the proportionate representation of the provinces prescribed by this Act is not thereby disturbed.

*Money Votes ; Royal Assent.*

Appropriation and tax bills.

53. Bills for appropriating any part of the public revenue, or for imposing any tax or impost, shall originate in the House of Commons.

Recommendation of money votes.

54. It shall not be lawful for the House of Commons to adopt or pass any vote, resolution, address, or bill for the appropriation of any part of the public revenue, or of any tax or impost, to any purpose that has not been first recommended to that House by message of the Governor-General in the session in which such vote, resolution, address, or bill is proposed.

Royal assent to bills, &c.

55. Where a bill passed by the Houses of the Parliament is presented to the Governor-General for the Queen's assent, he shall declare, according to his discretion, but subject to the provisions of this Act and to Her Majesty's instructions,

either that he assents thereto in the Queen's name, or that he withholds the Queen's assent, or that he reserves the bill for the signification of the Queen's pleasure.

56. Where the Governor-General assents to a bill in the Queen's name, he shall by the first convenient opportunity send an authentic copy of the Act to one of Her Majesty's Principal Secretaries of State, and if the Queen in Council within two years after receipt thereof by the Secretary of State thinks fit to disallow the Act, such disallowance (with a certificate of the Secretary of State of the day on which the Act was received by him) being signified by the Governor-General, by Speech or Message to each of the Houses of the Parliament or by Proclamation, shall annul the Act from and after the day of such signification.

Disallowance by Order-in-Council of Act assented to by Governor-General.

57. A bill reserved for the signification of the Queen's pleasure shall not have any force unless and until within two years from the day on which it was presented to the Governor-General for the Queen's assent the Governor-General signifies, by Speech or Message to each of the Houses of the Parliament or by Proclamation, that it has received the assent of the Queen in Council.

Signification of Queen's pleasure on bill reserved.

An entry of every such Speech, Message or Proclamation shall be made in the Journal of each House, and a duplicate thereof duly attested shall be delivered to the proper officer to be kept among the records of Canada.

#### V.—PROVINCIAL CONSTITUTIONS.

##### *Executive Power.*

58. For each province there shall be an officer, styled the Lieutenant-Governor, appointed by the Governor-General-in-Council by instrument under the Great Seal of Canada.

Appointment of Lieutenant-Governors of Provinces.

59. A Lieutenant-Governor shall hold office during the pleasure of the Governor-General; but any Lieutenant-Governor appointed after the commencement of the first session of the Parliament of Canada shall not be removable within five years from his appointment, except for cause assigned, which shall be communicated to him in writing within one month after the order for his removal is made, and shall be communicated by Message to the Senate and to the House of Commons within one week thereafter if the Parliament is then sitting; and if not, then within one week after the commencement of the next session of the Parliament.

Tenure of office of Lieutenant-Governor.

60. The salaries of the Lieutenant-Governors shall be fixed and provided by the Parliament of Canada.

Salaries of Lieutenant-Governors.

Oaths, &c., of  
Lieutenant-Gov-  
ernor.

61. Every Lieutenant-Governor shall, before assuming the duties of his office, make and subscribe before the Governor-General or some person authorized by him, oaths of allegiance and office similar to those taken by the Governor-General.

Application of  
provisions re-  
ferring to Lt.-  
Governor.

62. The provisions of this Act referring to the Lieutenant-Governor extend and apply to the Lieutenant-Governor for the time being of each province or other the chief executive officer or administrator for the time being carrying on the Government of the province, by whatever title he is designated.

Appointment of  
executive officers  
for Ontario and  
Quebec.

63. The Executive Council of Ontario and of Quebec shall be composed of such persons as the Lieutenant-Governor from time to time thinks fit, and in the first instance of the following officers, namely,—the Attorney-General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works, with, in Quebec, the Speaker of the Legislative Council and the Solicitor-General.

Executive Gov-  
ernment of Nova  
Scotia and New  
Brunswick.

[64] The constitution of the executive authority in each of the provinces of Nova Scotia and New Brunswick shall, subject to the provisions of this Act, continue as it exists at the union until altered under the authority of this Act.

Powers to be ex-  
ercised by Lieu-  
tenant-Governor  
of Ontario or  
Quebec with ad-  
vice or alone.

65. All powers, authorities and functions which, under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, or Canada, were or are before or at the union vested in or exercisable by the respective Governors or Lieutenant-Governors of those provinces, with the advice, or with the advice and consent, of the respective Executive Councils thereof, or in conjunction with those councils, or with any number of members thereof, or by those Governors or Lieutenant-Governors individually, shall, as far as the same are capable of being exercised after the union in relation to the Government of Ontario and Quebec respectively, be vested in and shall or may be exercised by the Lieutenant-Governor of Ontario and Quebec respectively, with the advice or with the advice and consent of or in conjunction with the respective Executive Councils, or any members thereof, or by the Lieutenant-Governor individually, as the case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland,) to be

abolished or altered by the respective Legislatures of Ontario and Quebec.

66. The provisions of this Act referring to the Lieutenant-Governor-in-Council shall be construed as referring to the Lieutenant-Governor of the province acting by and with the advice of the executive council thereof.

67. The Governor-General-in-Council may from time to time appoint an administrator to execute the office and functions of Lieutenant-Governor during his absence, illness, or other inability.

68. Unless and until the executive government of any province otherwise directs with respect to that province, the seats of government of the provinces shall be as follows, namely:—Of Ontario, the City of Toronto; of Quebec, the City of Quebec; of Nova Scotia, the City of Halifax; and of New Brunswick, the City of Fredericton.

### *Legislative Power.*

#### 1.—ONTARIO.

69. There shall be a legislature for Ontario, consisting of the Lieutenant-Governor and of one house, styled the Legislative Assembly of Ontario.

[70.] The Legislative Assembly of Ontario shall be composed of eighty-two members, to be elected to represent the eighty-two electoral districts set forth in the first schedule to this Act.

#### 2.—QUEBEC.

71. There shall be a legislature for Quebec, consisting of the Lieutenant-Governor and of two houses, styled the Legislative Council of Quebec and the Legislative Assembly of Quebec.

72. The Legislative Council of Quebec shall be composed of twenty-four members, to be appointed by the Lieutenant-Governor in the Queen's name, by instrument under the Great Seal of Quebec, one being appointed to represent each of the twenty-four electoral divisions of Lower Canada in this Act referred to, and each holding office for the term of his life, unless the Legislature of Quebec otherwise provides under the provisions of this Act.

73. The qualifications of the Legislative Councillors of Quebec shall be the same as those of the senators for Quebec.

74. The place of a Legislative Councillor of Quebec shall become vacant in the cases, *mutatis mutandis*, in which the place of senator becomes vacant.



Vacancies.

75. When a vacancy happens in the Legislative Council of Quebec by resignation, death, or otherwise, the Lieutenant-Governor in the Queen's name, by instrument under the Great Seal of Quebec, shall appoint a fit and qualified person to fill the vacancy.

Questions as to vacancies, &c.

76. If any question arises respecting the qualification of a Legislative Councillor of Quebec, or a vacancy in the Legislative Council of Quebec, the same shall be heard and determined by the Legislative Council.

Speaker of Legislative Council.

77. The Lieutenant-Governor may from time to time, by instrument under the Great Seal of Quebec, appoint a member of the Legislative Council of Quebec to be Speaker thereof, and may remove him and appoint another in his stead.

Quorum of Legislative Council.

78. Until the Legislature of Quebec otherwise provides, the presence of at least ten members of the Legislative Council, including the Speaker, shall be necessary to constitute a meeting for the exercise of its powers.

Voting in Legislative Council.

79. Questions arising in the Legislative Council of Quebec shall be decided by a majority of voices, and the Speaker shall, in all cases, have a vote, and when the voices are equal the decision shall be deemed to be in the negative.

Constitution of Legislative Assembly of Quebec.

80. The Legislative Assembly of Quebec shall be composed of sixty-five members, to be elected to represent the sixty-five electoral divisions or districts of Lower Canada in this Act referred to, subject to alteration thereof by the Legislature of Quebec; provided that it shall not be lawful to present to the Lieutenant-Governor of Quebec for assent any bill for altering the limits of any of the electoral divisions or districts mentioned in the second schedule to this Act, unless the second and third readings of this bill have been passed in the Legislative Assembly with the concurrence of the majority of the members representing all those electoral divisions or districts, and the assent shall not be given to such bill unless an address has been presented by the Legislative Assembly to the Lieutenant-Governor stating that it has been so passed.

### 3.—ONTARIO AND QUEBEC.

First session of Legislatures.

[81.] The Legislatures of Ontario and Quebec respectively shall be called together not later than six months after the union.

Summoning of Legislative Assemblies.

82. The Lieutenant-Governor of Ontario and of Quebec shall from time to time, in the Queen's name, by instrument under the Great Seal of the Province, summon and call together the Legislative Assembly of the Province.

83. Until the Legislature of Ontario or of Quebec otherwise provides, a person accepting or holding in Ontario or in Quebec any office, commission, or employment permanent or temporary, at the nomination of the Lieutenant-Governor, to which an annual salary, or any fee, allowance, emolument, or profit of any kind or amount whatever from the province is attached, shall not be eligible as a member of the Legislative Assembly of the respective province, nor shall he sit or vote as such; but nothing in this section shall make ineligible any person being a member of the Executive Council of the respective province, or holding any of the following offices, that is to say, the offices of Attorney-General, Secretary and Registrar of the Province, Treasurer of the Province, Commissioner of Crown Lands, and Commissioner of Agriculture and Public Works, and in Quebec Solicitor General, or shall disqualify him to sit or vote in the House for which he is elected, provided he is elected while holding such office.

Restriction on election of holders of offices.

[84.] Until the Legislatures of Ontario and Quebec respectively otherwise provide, all laws which at the union are in force in those provinces respectively, relative to the following matters, or any of them, namely,—the qualifications and disqualifications of persons to be elected or to sit or vote as members of the Assembly of Canada, the qualifications or disqualifications of voters, the oaths to be taken by voters, the returning officers, their powers and duties, the proceedings at elections, the periods during which such elections may be continued, and the trial of controverted elections and the proceedings incident thereto, the vacating of the seats of members and the issuing and execution of new writs in case of seats vacated otherwise than by dissolution,—shall respectively apply to elections of members to serve in the respective Legislative Assemblies of Ontario and Quebec.

Continuance of existing election laws.

Provided that until the Legislature of Ontario otherwise provides, at any election for a member of the Legislative Assembly of Ontario for the District of Algoma, in addition to persons qualified by the law of the Province of Canada to vote, every male British subject aged twenty-one years or upwards, being a householder, shall have a vote.

85. Every Legislative Assembly of Ontario and every Legislative Assembly of Quebec shall continue for four years from the day of the return of the writs for choosing the same (subject nevertheless to either the Legislative Assembly of Ontario or the Legislative Assembly of Quebec being sooner dissolved by the Lieutenant-Governor of the Province), and no longer.

Duration of Legislative Assemblies.

Yearly session of Legislature. 86. There shall be a session of the Legislature of Ontario and of that of Quebec once at least in every year, so that twelve months shall not intervene between the last sitting of the Legislature in each province in one session and its first sitting in the next session.

Speaker, quorum, &c. 87. The following provisions of this Act respecting the House of Commons of Canada shall extend and apply to the Legislative Assemblies of Ontario and Quebec, that is to say,—the provisions relating to the election of a Speaker originally and on vacancies, the duties of the Speaker, the absence of the Speaker, the quorum, and the mode of voting, as if those provisions were here re-enacted and made applicable in terms to each such Legislative Assembly.

#### 4.—NOVA SCOTIA AND NEW BRUNSWICK.

Constitutions of legislatures of Nova Scotia and New Brunswick. [88.] The constitution of the legislature of each of the Provinces of Nova Scotia and New Brunswick shall, subject to the provisions of this Act, continue as it exists at the union until altered under the authority of this Act; and the House of Assembly of New Brunswick existing at the passing of this Act shall, unless sooner dissolved, continue for the period for which it was elected.

#### 5.—ONTARIO, QUEBEC, AND NOVA SCOTIA.

First elections [89.] Each of the Lieutenant-Governors of Ontario, Quebec and Nova Scotia shall cause writs to be issued for the first election of members of the Legislative Assembly thereof in such form and by such person as he thinks fit, and at such time and addressed to such returning officer as the Governor-General directs, and so that the first election of member of assembly for any electoral district or any subdivision thereof shall be held at the same time and at the same place as the election for a member to serve in the House of Commons of Canada for that electoral district.

#### 6.—THE FOUR PROVINCES.

Application to legislatures of provisions respecting money votes. 90. The following provisions of this Act respecting the Parliament of Canada, namely,—the provisions relating to appropriation and tax bills, the recommendation of money votes, the assent to bills, the disallowance of Acts, and the signification of pleasure on bills reserved,—shall extend and apply to the legislatures of the several provinces as if those provisions were here re-enacted and made applicable in terms to the respective provinces and the legislatures thereof, with the substitution of the Lieutenant-Governor of the province for the Governor-General, of the Governor-

General for the Queen and for a Secretary of State, of one year for two years, and of the Province for Canada.

VI.—DISTRIBUTION OF LEGISLATIVE POWERS.

*Powers of the Parliament.*

91. It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order, and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated; that is to say:

1. The public debt and property.
2. The regulation of trade and commerce.
3. The raising of money by any mode or system of taxation.
4. The borrowing of money on the public credit.
5. Postal service.
6. The census and statistics.
7. Militia, military and naval service, and defence.
8. The fixing of and providing for the salaries and allowances of civil and other officers of the Government of Canada.
9. Beacons, buoys, lighthouses, and Sable Island.
10. Navigation and shipping.
11. Quarantine and the establishment and maintenance of marine hospitals.
12. Sea coast and inland fisheries.
13. Ferries between a province and any British or foreign country or between two provinces.
14. Currency and coinage.
15. Banking, incorporation of banks, and the issue of paper money.
16. Savings banks.
17. Weights and measures.
18. Bills of exchange and promissory notes.
19. Interest.
20. Legal tender.
21. Bankruptcy and insolvency.
22. Patents of invention and discovery.
23. Copyrights.
24. Indians, and lands reserved for the Indians.

25. Naturalization and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the constitution of courts of criminal jurisdiction, but including the procedure in criminal matters.
28. The establishment, maintenance, and management of penitentiaries.
29. Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature, comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces.

*Exclusive Powers of Provincial Legislatures.*

Subjects of exclusive Provincial legislation.

92. In each province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say :

1. The amendment from time to time, notwithstanding anything in this Act, of the constitution of the province, except as regards the office of Lieutenant-Governor.
2. Direct taxation within the province in order to the raising of a revenue for provincial purposes.
3. The borrowing of money on the sole credit of the province.
4. The establishment and tenure of provincial offices and the appointment and payment of provincial officers.
5. The management and sale of the public lands belonging to the province and of the timber and wood thereon.
6. The establishment, maintenance, and management of public and reformatory prisons in and for the province.
7. The establishment, maintenance, and management of hospitals, asylums, charities, and eleemosynary institutions in and for the province, other than marine hospitals.
8. Municipal institutions in the province.
9. Shop, saloon, tavern, auctioneer, and other licenses, in order to the raising of a revenue for provincial, local or municipal purposes.

10. Local works and undertakings other than such as are of the following classes :—
  - a. Lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province :
  - b. Lines of steamships between the province and any British or foreign country :
  - c. Such works as, although wholly situate within the province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the provinces.
11. The incorporation of companies with provincial objects.
12. The solemnization of marriage in the province.
13. Property and civil rights in the province.
14. The administration of justice in the province, including the constitution, maintenance and organization of provincial courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those courts.
15. The imposition of punishment by fine, penalty, or imprisonment for enforcing any law of the province made in relation to any matter coming within any of the classes of subjects enumerated in this section.
16. Generally all matters of a merely local or private nature in the province.

#### *Education.*

93. In and for each province the Legislature may exclusively make laws in relation to education, subject and according to the following provisions :—

1. Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the province at the Union :
2. All the powers, privileges and duties at the Union by law conferred and imposed in Upper Canada on the separate schools and school trustees of the Queen's Roman Catholic subjects shall be and the same are hereby extended to the dissentient schools of the Queen's Protestant and Roman Catholic subjects in Quebec :

3. Where in any province a system of separate or dissentient schools exists by law at the Union or is thereafter established by the legislature of the province, an appeal shall lie to the Governor-General-in-Council from any act or decision of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education :
4. In case any such provincial law as from time to time seems to the Governor-General-in-Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor-General-in-Council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section and of any decision of the Governor-General-in-Council under this section.

*Uniformity of Laws in Ontario, Nova Scotia, and New Brunswick.*

Legislation for uniformity of laws in three provinces.

94. Notwithstanding anything in this Act, the Parliament of Canada may make provision for the uniformity of all or any of the laws relative to property and civil rights in Ontario, Nova Scotia, and New Brunswick, and of the procedure of all or any of the courts in those three provinces, and from and after the passing of any Act in that behalf the power of the Parliament of Canada to make laws in relation to any matter comprised in any such Act shall, notwithstanding anything in this Act, be unrestricted ; but any Act of the Parliament of Canada making provision for such uniformity shall not have effect in any province unless and until it is adopted and enacted as law by the legislature thereof.

*Agriculture and Immigration.*

Concurrent powers of legislation respecting agriculture, &c.

95. In each province the legislature may make laws in relation to agriculture in the province, and to immigration into the province ; and it is hereby declared that the Parliament of Canada may from time to time make laws in relation to agriculture in all or any of the provinces, and to immigration into all or any of the provinces ; and

any law of the legislature of a province relative to agriculture or to immigration shall have effect in and for the province as long and as far only as it is not repugnant to any Act of the Parliament of Canada.

VII.—JUDICATURE.

96. The Governor-General shall appoint the judges of the superior, district, and county courts in each province, except those of the courts of probate in Nova Scotia and New Brunswick.

Appointment of judges.

97. Until the laws relative to property and civil rights in Ontario, Nova Scotia and New Brunswick, and the procedure of the courts in those provinces, are made uniform, the judges of the courts of those provinces appointed by the Governor-General shall be selected from the respective bars of those provinces.

Selection of judges in Ontario, &c.

98. The judges of the courts of Quebec shall be selected from the bar of that province.

Selection of judges in Quebec.

99. The judges of the superior courts shall hold office during good behavior, but shall be removable by the Governor-General on address of the Senate and House of Commons.

Tenure of office of judges of superior courts.

100. The salaries, allowances and pensions of the judges of the superior, district and county courts (except the courts of probate in Nova Scotia and New Brunswick), and of the admiralty courts in cases where the judges thereof are for the time being paid by salary shall be fixed and provided by the Parliament of Canada.

Salaries, &c., of judges.

101. The Parliament of Canada may, notwithstanding anything in this Act, from time to time provide for the constitution, maintenance and organization of a general court of appeal for Canada, and for the establishment of any additional courts for the better administration of the laws of Canada.

General court of appeal, &c.

VIII.—REVENUES: DEBTS: ASSETS; TAXATION.

102. All duties and revenues over which the respective legislatures of Canada, Nova Scotia and New Brunswick before and at the Union had and have power of appropriation, except such portions thereof as are by this Act reserved to the respective legislatures of the provinces, or are raised by them in accordance with the special powers conferred on them by this Act, shall form one consolidated revenue fund, to be appropriated for the public service of Canada in the manner and subject to the charges in this Act provided.

Creation of consolidated revenue fund.



Expenses of collection, &c.

103. The consolidated revenue fund of Canada shall be permanently charged with the costs, charges, and expenses incident to the collection, management, and receipt thereof, and the same shall form the first charge thereon, subject to be reviewed and audited in such manner as shall be ordered by the Governor-General-in-Council, until the Parliament otherwise provides.

Interest of provincial public debts.

104. The annual interest of the public debts of the several provinces of Canada, Nova Scotia, and New Brunswick at the Union shall form the second charge on the consolidated revenue fund of Canada.

Salary of Governor-General.

105. Unless altered by the Parliament of Canada, the salary of the Governor-General shall be ten thousand pounds sterling money of the United Kingdom of Great Britain and Ireland, payable out of the consolidated revenue fund of Canada, and the same shall form the third charge thereon.

Appropriation from time to time.

106. Subject to the several payments by this Act charged on the consolidated revenue fund of Canada, the same shall be appropriated by the Parliament of Canada for the public service.

Transfer of stocks, &c.

[107.] All stocks, cash, bankers' balances, and securities for money belonging to each province at the time of the Union, except as in this Act mentioned, shall be the property of Canada, and shall be taken in reduction of the amount of the respective debts of the provinces at the Union.

Transfer of property in schedule.

[108.] The public works and property of each province, enumerated in the third schedule to this Act, shall be the property of Canada.

Property in lands, mines, &c.

[109.] All lands, mines, minerals, and royalties belonging to the several provinces of Canada, Nova Scotia, and New Brunswick, at the Union, and all sums then due or payable for such lands, mines, minerals, or royalties, shall belong to the several provinces of Ontario, Quebec, Nova Scotia, and New Brunswick, in which the same are situate or arise, subject to any trusts existing in respect thereof, and to any interest other than that of the province in the same.

Assets connected with provincial debts.

[110.] All assets connected with such portions of the public debt of each province as are assumed by that province shall belong to that province.

Canada to be liable for provincial debts.

[111.] Canada shall be liable for the debts and liabilities of each province existing at the Union.

Debts of Ontario and Quebec.

[112.] Ontario and Quebec conjointly shall be liable to Canada for the amount (if any) by which the debt of the province of Canada exceeds at the Union sixty-two million five hundred thousand dollars, and shall be charged with interest at the rate of five per centum per annum thereon.

[113.] The assets enumerated in the fourth schedule to this Act belonging at the Union to the province of Canada shall be the property of Ontario and Quebec conjointly.

Assets of Ontario and Quebec.

[114.] Nova Scotia shall be liable to Canada for the amount (if any) by which its public debt exceeds at the Union eight million dollars, and shall be charged with interest at the rate of five per centum per annum thereon.

Debt of Nova Scotia.

[115.] New Brunswick shall be liable to Canada for the amount (if any) by which its public debt exceeds at the Union seven million dollars, and shall be charged with interest at the rate of five per centum per annum thereon.

Debt of New Brunswick.

[116.] In case the public debts of Nova Scotia and New Brunswick do not at the Union amount to eight million and seven million dollars respectively, they shall respectively receive by half-yearly payments in advance from the Government of Canada interest at five per centum per annum on the difference between the actual amounts of their respective debts and such stipulated amounts.

Payment of interest to Nova Scotia and New Brunswick.

117. The several provinces shall retain all their respective public property not otherwise disposed of in this Act, subject to the right of Canada to assume any lands or public property required for fortifications or for the defence of the country.

Provincial public property.

[118.] The following sums shall be paid yearly by Canada to the several provinces for the support of their Governments and Legislatures :

Grants to provinces.

Dollars.

Ontario .....	Eighty thousand.
Quebec.....	Seventy thousand.
Nova Scotia.....	Sixty thousand.
New Brunswick.....	Fifty thousand.

Two hundred and sixty thousand ; and an annual grant in aid of each province shall be made, equal to eighty cents per head of the population as ascertained by the census of one thousand eight hundred and sixty-one, and in the case of Nova Scotia and New Brunswick, by each subsequent decennial census until the population of each of those two provinces amounts to four hundred thousand souls, at which rate such grant shall thereafter remain. Such grants shall be in full settlement of all future demands on Canada, and shall be paid half-yearly in advance to each province ; but the Government of Canada shall deduct from such grants, as against any province, all sums chargeable as interest on the public debt of that province in excess of the several amounts stipulated in this Act.

Further grant to New Brunswick.

[119.] New Brunswick shall receive by half-yearly payments in advance from Canada for the period of ten years from the Union an additional allowance of sixty-three thousand dollars per annum; but as long as the public debt of that province remains under seven million dollars, a deduction equal to the interest at five per centum per annum on such deficiency shall be made from that allowance of sixty-three thousand dollars.

Form of payments.

120. All payments to be made under this Act, or in discharge of liabilities created under any Act of the Provinces of Canada, Nova Scotia, and New Brunswick respectively, and assumed by Canada, shall, until the Parliament of Canada otherwise directs, be made in such form and manner as may from time to time be ordered by the Governor-General-in-Council.

Canadian manufactures, &c.

121. All articles of the growth, produce, or manufacture of any one of the provinces shall, from and after the Union, be admitted free into each of the other provinces.

Continuance of customs and excise laws.

[122.] The customs and excise laws of each province shall, subject to the provisions of this Act, continue in force until altered by the Parliament of Canada.

Exportation and importation as between two provinces.

[123.] Where customs duties are at the Union leviable on any goods, wares, or merchandises in any two provinces, those goods, wares and merchandises may, from and after the Union, be imported from one of those provinces into the other of them on proof of payment of the customs duty leviable thereon in the province of exportation, and on payment of such further amount (if any) of customs duty as is leviable thereon in the province of importation.

Lumber dues in New Brunswick.

[124.] Nothing in this Act shall affect the right of New Brunswick to levy the lumber dues provided in Chapter Fifteen of Title Three of the Revised Statutes of New Brunswick, or in any Act amending that Act before or after the union, and not increasing the amount of such dues; but the lumber of any of the provinces other than New Brunswick shall not be subject to such dues.

Exemption of public lands, &c.

125. No lands or property belonging to Canada or any province shall be liable to taxation:

Provincial consolidated revenue fund.

126. Such portions of the duties and revenues over which the respective Legislatures of Canada, Nova Scotia and New Brunswick had before the Union power of appropriation as are by this Act reserved to the respective Governments or Legislatures of the provinces, and all duties and revenues raised by them in accordance with the special powers conferred upon them by this Act, shall in each province form one consolidated revenue fund, to be appropriated for the public service of the province.

## IX.—MISCELLANEOUS PROVISIONS.

*General.*

[127.] If any person being at the passing of this Act a member of the Legislative Council of Canada, Nova Scotia, or New Brunswick, to whom a place in the Senate is offered, does not within thirty days thereafter, by writing under his hand addressed to the Governor-General of the Province of Canada or to the Lieutenant-Governor of Nova Scotia or New Brunswick (as the case may be), accept the same, he shall be deemed to have declined the same; and any person who, being at the passing of this Act a member of the Legislative Council of Nova Scotia or New Brunswick, accepts a place in the Senate shall thereby vacate his seat in such Legislative Council.

As to legislative councillors of provinces becoming senators.

128. Every member of the Senate or House of Commons of Canada shall before taking his seat therein take and subscribe before the Governor-General or some person authorized by him, and every member of a legislative council or legislative assembly of any province shall before taking his seat therein take and subscribe before the Lieutenant-Governor of the province or some person authorized by him, the oath of allegiance contained in the fifth schedule to this Act; and every member of the Senate of Canada and every member of the Legislative Council of Quebec shall also, before taking his seat therein, take and subscribe before the Governor-General or some person authorized by him, the declaration of qualification contained in the same schedule.

Oath of allegiance, &c.

[129.] Except as otherwise provided by this Act, all laws in force in Canada, Nova Scotia, or New Brunswick at the Union, and all courts of civil and criminal jurisdiction and all legal commissions, powers, and authorities, and all officers, judicial, administrative and ministerial, existing therein at the Union, shall continue in Ontario, Quebec, Nova Scotia and New Brunswick respectively, as if the Union had not been made; subject nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland), to be repealed, abolished, or altered by the Parliament of Canada, or by the legislature of the respective province, according to the authority of the parliament or of that legislature under this Act.

Continuance of existing laws, courts, officers, &c.

[130.] Until the Parliament of Canada otherwise provides, all officers of the several provinces having duties to discharge in relation to matters other than those coming

Transfer of officers to Canada.

within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces shall be officers of Canada, and shall continue to discharge the duties of their respective offices under the same liabilities, responsibilities, and penalties, as if the Union had not been made.

Appointment of  
new officers.

[131.] Until the Parliament of Canada otherwise provides, the Governor-General-in-Council may from time to time appoint such officers as the Governor-General-in-Council deems necessary or proper for the effectual execution of this Act.

Treaty obliga-  
tions.

132. The Parliament and Government of Canada shall have all powers necessary or proper for performing the obligations of Canada or any province thereof, as part of the British Empire, towards foreign countries, arising under treaties between the empire and such foreign countries.

Use of English  
and French lan-  
guages.

133. Either the English or the French language may be used by any person in the debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those languages shall be used in the respective records and journals of those Houses; and either of those languages may be used by any person or in any pleading or process in or issuing from any court of Canada established under this Act, and in or from all or any of the courts of Quebec.

The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those languages.

#### *Ontario and Quebec.*

Appointment of  
executive offi-  
cers for Ontario  
and Quebec.

134. Until the Legislature of Ontario or of Quebec otherwise provides, the Lieutenant-Governors of Ontario and Quebec may each appoint under the Great Seal of the province the following officers, to hold office during pleasure, that is to say,—the Attorney-General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works, and in the case of Quebec the Solicitor-General; and may, by order of the Lieutenant-Governor-in-Council, from time to time prescribe the duties of those officers and of the several departments over which they shall preside or to which they shall belong, and of the officers and clerks thereof; and may also appoint other and additional officers to hold office during pleasure, and may from time to time prescribe the

duties of those officers, and of the several departments over which they shall preside or to which they shall belong, and of the officers and clerks thereof.

135. Until the Legislature of Ontario or Quebec otherwise provides, all rights, powers, duties, functions, responsibilities or authorities at the passing of this Act vested in or imposed on the Attorney-General, Solicitor-General, Secretary and Registrar of the Province of Canada, Minister of Finance, Commissioner of Crown Lands, Commissioner of Public Works and Minister of Agriculture and Receiver-General by any law, statute, or ordinance of Upper Canada, Lower Canada, or Canada, and not repugnant to this Act, shall be vested in or imposed on any officer to be appointed by the Lieutenant-Governor for the discharge of the same or any of them; and the Commissioner of Agriculture and Public Works shall perform the duties and functions of the office of Minister of Agriculture at the passing of this Act imposed by the law of the Province of Canada, as well as those of the Commissioner of Public Works.

Powers, duties, &c., of executive officers.

136. Until altered by the Lieutenant-Governor-in-Council, the Great Seals of Ontario and Quebec respectively shall be the same, or of the same design, as those used in the Provinces of Upper Canada and Lower Canada respectively before their union as the Province of Canada.

Great Seals.

[137.] The words "and from thence to the end of the then next ensuing session of the Legislature," or words to the same effect, used in any temporary Act of the Province of Canada not expired before the union, shall be construed to extend and apply to the next session of the Parliament of Canada, if the subject matter of the Act is within the powers of the same, as defined by this Act, or to the next sessions of the Legislatures of Ontario and Quebec respectively, if the subject-matter of the Act is within the powers of the same as defined by this Act.

Construction of temporary Acts.

138. From and after the Union the use of the words "Upper Canada," instead of "Ontario," or "Lower Canada," instead of "Quebec," in any deed, writ, process, pleading, document, matter, or thing, shall not invalidate the same.

As to errors in names.

139. Any proclamation under the Great Seal of the Province of Canada issued before the Union to take effect at a time which is subsequent to the Union, whether relating to that province, or to Upper Canada, or to Lower Canada, and the several matters and things therein proclaimed shall be and continue of like force and effect as if the Union had not been made.

As to issue of proclamations before union, to commence after union.

As to issue of proclamations after union.

140. Any proclamation which is authorized by any Act of the legislature of the Province of Canada, to be issued under the Great Seal of the Province of Canada, whether relating to that province, or to Upper Canada, or to Lower Canada, and which is not issued before the Union may be issued by the Lieutenant-Governor of Ontario or of Quebec, as its subject matter requires, under the Great Seal thereof; and from and after the issue of such proclamation the same and the several matters and things therein proclaimed shall be and continue of the like force and effect in Ontario and Quebec as if the Union had not been made.

Penitentiary.

141. The penitentiary of the Province of Canada shall, until the Parliament of Canada otherwise provides, be and continue the penitentiary of Ontario and Quebec.

Arbitration respecting debts, &c.

[142.] The division and adjustment of the debts, credits, liabilities, properties and assets of Upper Canada and Lower Canada shall be referred to the arbitration of three arbitrators, one chosen by the Government of Ontario, one by the Government of Quebec, and one by the Government of Canada; and the selection of the arbitrators shall not be made until the Parliament of Canada and the Legislatures of Ontario and Quebec have met; and the arbitrator chosen by the Government of Canada shall not be a resident either in Ontario or in Quebec.

Division of records.

143. The Governor-General-in-Council may from time to time order that such and so many of the records, books and documents of the Province of Canada as he thinks fit shall be appropriated and delivered either to Ontario or to Quebec, and the same shall thenceforth be the property of that province; and any copy thereof or extract therefrom, duly certified by the officer having charge of the original thereof, shall be admitted as evidence.

Constitution of townships in Quebec.

144. The Lieutenant-Governor of Quebec may from time to time, by proclamation under the Great Seal of the Province, to take effect from a day to be appointed therein, constitute townships in those parts of the Province of Quebec in which townships are not then already constituted, and fix the metes and bounds thereof.

#### X.—INTERCOLONIAL RAILWAY.

Duty of Government and Parliament of Canada to make railway herein described.

[145.] Inasmuch as the Provinces of Canada, Nova Scotia and New Brunswick have joined in a declaration that the construction of the Intercolonial Railway is essential to the consolidation of the Union of British North America, and to the assent thereto of Nova Scotia and New Brunswick, and have consequently agreed that

provision should be made for its immediate construction by the Government of Canada: Therefore, in order to give effect to that agreement, it shall be the duty of the Government and Parliament of Canada to provide for the commencement within six months after the Union of a railway connecting the river St. Lawrence with the City of Halifax, in Nova Scotia, and for the construction thereof without intermission, and the completion thereof with all practicable speed.

XI.—ADMISSION OF OTHER COLONIES.

[146.] It shall be lawful for the Queen, by and with the advice of Her Majesty's Most Honorable Privy Council, on addresses from the Houses of the Parliament of Canada, and from the houses of the respective legislatures of the colonies or provinces of Newfoundland, Prince Edward Island and British Columbia, to admit those colonies or provinces, or any of them, into the Union, and on address from the Houses of the Parliament of Canada to admit Rupert's Land and the North-West Territory, or either of them, into the Union, on such terms and conditions in each case as are in the addresses expressed and as the Queen thinks fit to approve, subject to the provisions of this Act; and the provisions of any order-in-council in that behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland.

Power to admit Newfoundland, &c., into the union.

147. In case of the admission of Newfoundland and Prince Edward Island, or either of them, each shall be entitled to a representation in the Senate of Canada of four members, and (notwithstanding anything in this Act) in case of the admission of Newfoundland the normal number of senators shall be seventy-six, and their maximum number shall be eighty-two; but Prince Edward Island, when admitted, shall be deemed to be comprised in the third of the three divisions into which Canada is, in relation to the constitution of the senate, divided by this Act; and accordingly, after the admission of Prince Edward Island, whether Newfoundland is admitted or not, the representation of Nova Scotia and New Brunswick shall, as vacancies occur, be reduced from twelve to ten members respectively, and the representation of each of those provinces shall not be increased at any time beyond ten except under the provisions of this Act for the appointment of three or six additional senators under the direction of the Queen.

As to representation of Newfoundland and Prince Edward Island in senate.



## SCHEDULES.

## THE FIRST SCHEDULE.

*Electoral Districts of Ontario.\**

\* \* \* \* \*

## THE SECOND SCHEDULE.

*Electoral Districts of Quebec specially fixed.*

## COUNTIES OF

Pontiac.		Missisquoi.		Compton.
Ottawa.		Brome.		Wolfe and Richmond.
Argenteuil.		Shefford.		Megantic.
Huntingdon.		Stanstead.		
		Town of Sherbrooke.		

## THE THIRD SCHEDULE.

*Provincial Public Works and Property to be the Property of Canada.*

1. Canals, with lands and water power connected therewith.
2. Public harbors.
3. Lighthouses and piers, and Sable Island.
4. Steamboats, dredges, and public vessels.
5. Rivers and lake improvements.
6. Railways and railway stocks, mortgages, and other debts due by railway companies.
7. Military roads.
8. Custom Houses, Post Offices, and all other public buildings, except such as the Government of Canada appropriate for the use of the Provincial Legislatures and Governments.
9. Property transferred by the Imperial Government, and known as Ordnance Property.

\*The first schedule is omitted as being of little interest, and partly obsolete.

10. Armories, drill sheds, military clothing, and munitions of war, and lands set apart for general public purposes.

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THE FOURTH SCHEDULE.

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*Assets to be the Property of Ontario and Quebec conjointly.*

Upper Canada Building Fund.  
 Lunatic Asylums.  
 Normal School.  
 Court Houses,  
     in  
 Aylmer,                    } Lower Canada.  
 Montreal,  
 Kamouraska.            }  
 Law Society, Upper Canada.  
 Montreal Turnpike Trust.  
 University Permanent Fund.  
 Royal Institution.  
 Consolidated Municipal Loan Fund, Upper Canada.  
 Consolidated Municipal Loan Fund, Lower Canada.  
 Agricultural Society, Upper Canada.  
 Lower Canada Legislative Grant.  
 Quebec Fire Loan.  
 Temiscouata Advance Account.  
 Quebec Turnpike Trust.  
 Education—East.  
 Building and Jury Fund, Lower Canada.  
 Municipalities Fund.  
 Lower Canada Superior Education Income Fund.

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THE FIFTH SCHEDULE.

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*Oath of Allegiance.*

I, A. B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria.

NOTE.—The name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being is to be substituted from time to time, with proper terms of reference thereto.

*Declaration of Qualification.*

I, A. B., do declare and testify that I am by law duly qualified to be appointed a member of the Senate of Canada (*or as the case may be*), and that I am legally or equitably seised as of freehold for my own use and benefit of lands or tenements held in free and common socage [*or seised or possessed for my own use and benefit of lands or tenements held in franc-allevu or in roture (or as the case may be),*] in the Province of Nova Scotia (*or as the case may be*), of the value of four thousand dollars over and above all rents, dues, debts, mortgages, charges, and encumbrances due or payable out of or charged on or affecting the same, and that I have not collusively or colorably obtained a title to or become possessed of said lands and tenements or any part thereof for the purpose of enabling me to become a member of the Senate of Canada (*or as the case may be*), and that my real and personal property are together worth four thousand dollars over and above my debts and liabilities.

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**ERRATUM.**

On page 8, the Act of 1879 relating to the taxation of Sugar Refineries should be chaptered 28 instead of 27.

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