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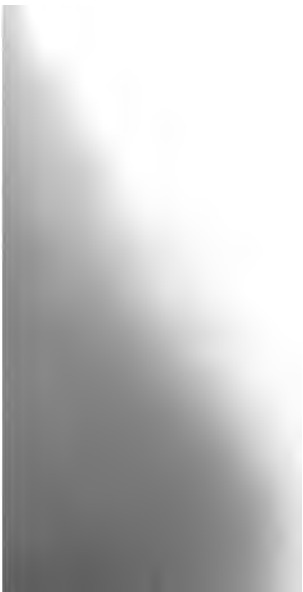
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THE

# REVISED STATUTES

OF

# NOVA SCOTIA.

---

FOURTH SERIES.

---

PREPARED BY

ALONZO J. WHITE.

HENRY C. D. TWINING.

JAMES W. JOHNSTON.

COMMISSIONERS FOR REVISING AND CONSOLIDATING THE STATUTES OF THE PROVINCE.

---

ARRANGED, PREPARED FOR THE PRESS, AND INDEXED BY

HENRY C. D. TWINING.

LAWRENCE G. POWER.

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HALIFAX, N. S.:

WESLEY ANNAND, PUBLISHER.

1873.



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

(Passed the 30th day of April, A.D., 1873.)

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 Titles 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 be then in operation, shall thereupon and thereafter become and be in force.

2. 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.

3. 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 such 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.

4. All Acts in force on the first day of the present Session, which shall not since have expired, or have been repealed by some such separate Act, as mentioned in the third section, or by some Chapter published in advance, as mentioned in the second section, shall continue in force, subject to any amendments, which may have been made thereto by any such 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 except the Acts hereinafter named, and as respects such Acts as shall not be substantially incorporated in the Consolidated Statutes, and which shall not have been repealed or have expired.

5. Such Chapters of the Statutes as relate to matters over which the exclusive authority of the Parliament of Canada extends under Section 91, of the British North America Act, 1867, and which have not been specifically repealed since the passage of such Act, shall be published with such Consolidated Statutes in the form of an appendix thereto.

6. The following Acts are continued in force, notwithstanding and after the publication of the Revised Statutes; that is to say,

Chapter 28, of the Acts 1863, entitled, "An Act to regulate the Election of Members to serve in the General Assembly," together with the Acts in amendment thereof.

So much of Chapter 70, of the Revised Statutes (third series), "Of Provincial Government Railroads," as applies to companies incorporated to construct railroads in this Province, and is not inconsistent with the Charters of such Companies, and is necessary to carry out the provisions thereof.

7. All such other Chapters of the Revised Statutes (third series) and all such other Acts, which shall not have been repealed or have expired, and which shall not be substantially incorporated in the Consolidated Statutes when the same shall be so published, shall also be continued in force, notwithstanding and after the publication of such Consolidated Statutes.

8. All rights accruing or accrued under any of the Statutes so repealed, are reserved; and all penalties incurred thereunder, shall be enforced, as if such Statutes had not been repealed.

9. Nothing herein contained shall affect, or include local, or private Acts.

**ANALYSIS**  
**OF THE**  
**SEVERAL PARTS, TITLES AND CHAPTERS,**  
**CONTAINED IN**  
**THE REVISED STATUTES.**

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# PROVINCE OF NOVA-SCOTIA.

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IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED  
AND SEVENTY-THREE.

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## AN ACT FOR REVISING AND CONSOLIDATING THE GENERAL STATUTES OF NOVA SCOTIA.

---

FOURTH SERIES.

---

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

CHAP. 1.**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 the date of its passage, and the endorsement shall be held part of the act, and shall be the date of its commencement, unless otherwise 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, that is to say:

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

"Governor" shall include the governor, lieutenant-governor, or person administering the government of the Province for the time being.

"Sessions" shall denote the court of general or quarter sessions of the peace for the county or district; and "special sessions" shall denote a special sessions of the peace for the county or district.

"Justice" shall signify Justice of the Peace.

"Prothonotary" shall include deputy prothonotary.

"Clerk of the Crown" shall include deputy clerk of the CHAP. 1.  
CROWN.

"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.

"Warrant" shall signify warrant under hand and seal.

"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.

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

"Goods" shall mean personal property.

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

"Representatives" shall mean executors and administrators.

"Wills" shall include codicils.

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

"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."

"Person" may extend to bodies politic and corporate as well as to individuals.

"Folio" shall mean ninety words.

"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.

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.

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.

8. 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 Penalties, how recovered and appropriated.



**CHAP. 1.** if it were a private debt due such person, the nature of the offence being briefly stated in the summons; and where no particular mode of applying any 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.

**Appeals.** The imposition of a penalty shall not relieve any person from liability to answer for special damages to a party injured. Appeals to the Supreme Court shall be allowed by justices of the peace, from judgments given by them in all such cases tried before them, in the same manner and on the same terms as are provided in civil suits, except where otherwise specially provided.

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.

Prosecutions for such penalties or forfeitures may be in the name of any person, or of any corporate body.

**Authority to fill vacancies.** 9. 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.

**Bye laws, power to make and alter.** 10. Where power to make bye-laws, regulations, rules or orders is conferred, it shall include the power to alter or revoke the same, and make others. No bye-law shall be enforced if repugnant to law.

**County charges how recovered.** 11. When it is declared that any matter is to form a county charge, the expense shall be presented, confirmed, assessed, levied and collected with and by the same means as by law directed with regard to other moneys for county purposes.

**Forms.** 12. Where forms are prescribed, slight deviations therefrom not affecting the substance or calculated to mislead, shall not vitiate them.

**Sunday, &c.** 13. If the day upon which an act is to be done shall fall on a Sunday, Christmas Day, or Good Friday, the same shall be performed on the day following.

**Justices to 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.

16. When bonds are required to be given by a public officer, they shall be taken in Her Majesty's name when not otherwise directed.

CHAP. 1.  
Bonds of public officers.

17. 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.

Withdrawal of sureties.

18. 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.

Officers appointed during pleasure.



## PART I.

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

## TITLE I.

## OF THE LEGISLATURE.

## CHAPTER 2.

## OF LEGISLATIVE COUNCILLORS.

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 coun-  
cillors.

2. 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.

Absence shall  
vacate seat.

## CHAPTER 3.

## OF EXECUTIVE AND LEGISLATIVE DISABILITIES.

1. 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:

Persons incap-  
able of sitting or  
voting in legis-  
lative council or  
house of assem-  
bly.

Judge of the Supreme Court,  
Judge of the Court of *Vice Admiralty*,  
r *Registrar of Probate*,

**CHAP. 3.** Postmaster General, Postmaster or Deputy Postmaster—  
 not to include way office keeper,  
 Deputy Surveyor of Crown Lands,  
 Queen's Printer,  
 Registrar of Deeds,  
 Prothonotary,  
 Gold Commissioner or deputy gold commissioner,  
 Officer or clerk of the Customs, or of colonial or light  
 duties, or person concerned in the receiving or managing  
 of any momeys to be collected under any of such depart-  
 ments,  
 Commissioner or manager of government railroads,  
 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,  
 Railroad contractor.

Members accept-  
 ing office vacate  
 their seats.

Appointment,  
 election, &c.,  
 void.

Seat of depart-  
 mental officer  
 not vacated by  
 resignation if he  
 accept another  
 office within a  
 month.

Members of Sen-  
 ate and House of  
 Commons inel-  
 igible for Legisla-  
 tive Council and  
 House of Assem-  
 bly.

2. 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.

3. The appointment, nomination, election, or return, of persons disabled as herein 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.

4. When any person holding the office of Provincial Secretary, Attorney General, Treasurer, Commissioner of Public Works and Mines, or Commissioner of Crown Lands, 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 of any other of such offices, he shall not thereby vacate his seat in such assembly.

5. 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, his seat in the Legislative Council or House of Assembly, as the case may be, shall thereby be vacated.

6. No person referred to in the first 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 resignation to the Provincial Secretary. CHAP. 4.  
Effect of resignation of office.

7. Nothing in this Chapter shall be held to apply to or in any manner affect any departmental officer in the Provincial Government, 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.

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## CHAPTER 4.

### OF THE DURATION OF AND REPRESENTATION IN THE GENERAL ASSEMBLY.

1. No General Assembly shall determine merely in consequence of the demise of her majesty. Duration of Assembly not affected by death of Queen.

2. 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. Duration of Assembly.

3. 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. Composition of House of Assembly.

4. The boundaries of counties and polling districts shall be the same as now established. Boundaries of counties, &c.

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## CHAPTER 5.

### OF THE PREVENTION OF CORRUPT PRACTICES AT ELECTIONS.

1. No person shall recover from a candidate or his agents for entertainment furnished at the request of any of them to other persons at an election; and if, upon trial, it shall appear that any part of the plaintiff's claim is for entertainment so furnished, he shall be non-suited. Expenses for entertainment, &c. not recoverable from candidate or his agent.

## CHAP. 5.

Penalty for candidate furnishing intoxicating liquors.

Persons deemed guilty of bribery.

Any person giving, promising, &c., money or valuable consideration to voter or other person to induce voter to vote, or refrain from voting.

Any person giving, promising, &c., office or employment to voter or other person, to induce voter to vote or refrain from voting.

Any person making gift, loan, offer, &c., to any one to induce him to procure return of candidate, or vote.

Person promising to procure return, or vote in consequence of gift, &c.

Person advancing or repaying money to be used or already expended in bribery.

Penalty.

2. If a candidate during an election shall furnish, or willingly permit to be furnished, to an elector or person claiming to be an elector, any intoxicating liquors, he shall forfeit four hundred dollars.

3. The following persons shall be deemed guilty of 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 other 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 other 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.

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 endeavor 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.

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. CHAP. 5.  
Proviso.

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

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. Voter receiving  
or agreeing to  
receive money  
&c., for voting or  
refraining to  
vote.

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. Person after  
election receiv-  
ing money, &c.,  
on account of  
person having  
voted or refrain-  
ed from voting.

And any person so offending shall be liable to forfeit the sum of forty dollars to any person who shall sue for the same, together with costs of suit. Penalty.

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

6. The pecuniary penalties hereby imposed for the offences of bribery or undue influence, respectively, shall be recoverable by action or suit in the Supreme Court by any person who shall sue for the same. Penalties—how  
recovered.

7. 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 Court may order  
payment of costs  
of prosecution.



## CHAP. 5.

Defendant entitled to his costs if judgment in his favor.

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

Limitation of actions.

Seat of candidate guilty of bribery, &c., vacated.

Form of action.

Title of Chapter.

Meaning of words, &c.

8. 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.

9. 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 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.

10. 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.

11. If any candidate returned at an election for any County shall be declared by the report of any election committee guilty, by himself or his agents, of bribery or undue influence at such election, the seat of such candidate shall, by such report, be forthwith vacated.

12. 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.

13. In citing this Chapter it shall be sufficient to use the expression, "the corrupt practices prevention Chapter."

14. Throughout this Chapter, in the construction thereof, except there be something in the subject or context repugnant to such construction, the word "election" shall mean the election of any member or members to serve in the assembly; the word "voter" shall mean any person who has or claims to have a right to vote in the election of a member or members to serve in the

assembly; and the words "candidate at an election," shall include all persons elected as members to serve in the assembly at such election, and all persons nominated as candidates, or who shall have declared themselves candidates at or before such election. CHAP. 6.

## CHAPTER 6.

### OF CONTROVERTED ELECTIONS.

1. When a petition complaining of an undue election, or return of a member to serve in the House of Assembly, shall be presented to the house, a day and hour shall be appointed by the house for taking the same into consideration, and notice in writing shall be forthwith given by the Speaker to the petitioner and the sitting member, or their agents, accompanied with an order to them to attend the house at the time appointed, by themselves, their counsel, or agents; and, if at the time appointed none of the petitioners shall appear, either personally, or by counsel or agent, the order for taking the petition into consideration shall be discharged, and the petition shall not be further proceeded with. No such petition shall be received after fourteen days shall have elapsed from the time that the member whose return is complained of shall have taken his seat.

Proceedings on petition against a return.

2. No proceeding shall be had on a petition unless at or before the time appointed for the consideration thereof at least one of the petitioners shall enter into a bond to Her Majesty, with sureties, in the sum of eight hundred dollars, for the payment of the costs and expenses that may become payable by the petitioners, under any report of committee on the petition; the bond, in case of non-payment, to be put in suit for the benefit of the parties entitled to the costs and expenses.

Bond required.

3. If before the day appointed for considering the petition the member whose return is complained of shall die, or accept the office of Legislative Councillor, or declare under his hand his intention not to defend his return, the Speaker shall give notice thereof in writing to the Sheriff of the County where the election was had, and shall also notify the same in two public newspapers, so that any of the freeholders of the county for which the member was returned may, if they think fit, petition the house to be

Proceedings on undefended return.

**CHAP. 6.** admitted as parties in the room of the member; and they shall thereupon be so admitted as parties, and stand, as respects the controversy, in the place of the sitting member.

Proceedings at the time for considering the petition.

4. At the time appointed for considering the petition, and previous to reading the order of the day therefor, the Speaker shall direct the Sergeant-at-Arms to go to the places adjacent and require the immediate attendance of members on the business of the house; and after his return the house shall be counted, and if there are less than twenty-four members present the order shall be adjourned to a particular hour on the following day, when the house shall proceed in the same manner; and so, from day to day, until there shall be in attendance twenty-four members at the reading of the order.

Committee—how drawn.

5. When twenty-four members shall be present, the petitioners, their counsel or agents, and the counsel or agents of the sitting member, shall be ordered to attend at the bar; and then the door of the house shall be locked, and no member shall be suffered to enter into or depart from the house until the drawing shall be completed. The order of the day shall then be read, and the names of the members written on distinct pieces of paper, and, as nearly as may be, of equal size, and rolled up in the same manner, shall be equally divided, and put into two several boxes placed on the table, and shall be shaken together, and the Clerk shall publicly draw out of the boxes alternately the pieces of paper and deliver them to the Speaker to be read to the house, until fifteen names of members then present are drawn.

Names of certain members set aside.

6. If the name of a member who shall have voted at the election complained of, or against whose return a petition shall be depending shall be drawn, it shall be set aside.

Members how and when excused.

7. If a member drawn shall verify, on oath, an excuse, the substance thereof shall be taken down by the Clerk, in order that the same may afterwards be entered on the journals, and the opinion of the house shall be taken thereon; and if they shall resolve that the member is unable to serve, or cannot, without great detriment, serve on the committee, he shall be excused therefrom.

Members serving on a committee excused.

8. If the name of a member then serving on one election committee be drawn, he shall be excused from serving on a second.

When members excused other names to be drawn.

9. When members are set aside or excused, others shall be drawn in their place, who may in like manner be set aside or excused and others drawn in their place, until the whole number of fifteen members not liable to be set aside or excused shall be complete.

10. When the drawing shall be completed the door of the house shall be unlocked, and lists of the fifteen members shall be given to each party, and they shall immediately retire with the Clerk or Clerk Assistant, and each party, his counsel or agent, beginning on the part of the petitioners, shall alternately strike off one of the fifteen members until the number shall be reduced to seven; and the Clerk or Assistant, within one hour at farthest from the time of the lists being given, shall deliver into the house the names of the seven members then remaining: and such seven members shall be sworn at the table well and truly to try the matter of the petition referred to them, and a true judgment to give according to the evidence, and shall be a committee to determine the election; and the house shall by order direct them to meet at a certain time, and the place of their meeting shall be in a committee room of the house, and they shall sit every day, and shall not adjourn for more than a day without leave of the house, upon special cause assigned.

CHAP. 6.

Committee how struck; to be sworn; how adjourned.

11. If at the time appointed for considering the petition, the sitting member shall not appear by himself, or his counsel or agent, the committee shall be appointed as follows: the names of fifteen members shall be drawn in manner hereinafore prescribed, but in reducing the lists the Clerk or Clerk Assistant shall stand in the place of the sitting member; and the same method of reducing the number shall be followed whenever a party waives his right of striking off names.

Committee how appointed and struck in undefended cases.

12. The committee shall, on meeting, select a chairman, and if in the selection, the voices are equal, the member whose name was first drawn in the house shall have an additional casting vote; and the same course shall be pursued if necessary, to elect a new chairman, on the death or necessary absence of the previous chairman.

Chairman how selected.

13. The committee shall have power to send for persons and papers, and shall examine witnesses on oath, and shall consider evidence and proceedings duly had on a scrutiny, and referred to them by the house, and may admit additional evidence sworn to be material, and which in their judgment ought to be received; and shall determine whether the petitioner or the sitting member, or either of them, is duly returned or elected, or whether the election is void, or whether a new writ ought to issue; and their determination shall be final; and the house on being informed thereof by the chairman of the committee, shall order the same to be entered on the journals, and give the necessary directions for carrying the determination of the committee into execution.

Powers and duty of committee.

**CHAP. 6.**

Committee may report specially.

14. If the committee shall come to any resolution other than the determination above mentioned, they may report the same to the house for their opinion; and the house may confirm or disagree with the resolution, and make such order thereon as they may think proper.

Committee man absenting himself.

15. No member of the committee shall absent himself therefrom without leave of the house; and the chairman shall report the name of a member so absenting himself, who shall, for his neglect, be punished or censured at the discretion of the house; and the committee shall never proceed unless five members are present.

Where committee reduced to less than five.

16. If the members of the committee shall be unavoidably reduced to less than five, and shall so continue for three days, the committee shall be dissolved, and another chosen in like manner; but the evidence already taken shall be considered by the new committee.

Disobedience to summons of committee.

17. If persons summoned by the committee shall disobey the summons, or if witnesses before the committee shall prevaricate or misbehave in giving or refusing to give evidence, the chairman may, by direction of the committee, report the same to the house for the interposition of their authority or censure.

Their power and discretion in certain cases.

18. When the committee shall think it necessary to deliberate among themselves, they may, after hearing the evidence and counsel on both sides, direct the room to be cleared.

A majority of voices shall decide.

19. Decisions of the committee shall be made by a majority of voices; and if the voices be equal, including the chairman, he shall have an additional casting vote.

Oaths how administered.

20. The oaths by this Chapter directed to be taken in the house shall be administered by the Clerk or Assistant, and those before the committee by the chairman.

Effect of prorogation while a committee sitting.

21. If the General Assembly shall be prorogued while a committee shall be sitting, the committee shall not be dissolved, but shall be thereby adjourned to twelve o'clock on the fourth day following that on which the assembly shall meet again in session; and the former proceedings of the committee shall remain in force, and the committee shall meet at the time to which it shall be so adjourned, and continue to act as if there had been no prorogation.

Committee to report whether petition frivolous.

22. The committee, when they report their final determination to the house, shall also report whether the petition did or did not appear to them frivolous or vexatious, and also whether the opposition thereto did or did not appear to them frivolous or vexatious; and such report shall be signed by the majority concurring therein.

If a petition reported frivolous, expenses recoverable.

23. When a petition shall be reported frivolous or vexatious, the sitting member shall be entitled to recover from the petitioners, or any of them, the expenses of opposing the same.

24. When the opposition to a petition shall be reported CHAP. 6.  
frivolous or vexatious, the petitioners shall be entitled to  
recover from the sitting member the expenses of prose- If opposition re-  
cuting such petition. ported frivolous.

25. The expenses of prosecuting or opposing a petition Expenses how  
shall include witnesses' fees as well as other costs and taxed.  
expenses, and shall be ascertained as follows: the Speaker,  
on application, shall direct them to be taxed by the Clerk  
of the house and a master of the Supreme Court, who shall  
tax the same and report the amount to the Speaker, who,  
on the approval by the house thereof, or of such part  
thereof as the house may allow, shall, on application, deliver  
to the parties a certificate under his hand, expressing the  
amount of the expenses allowed; and the persons appointed  
to tax the expenses and report the amount shall be entitled  
to such fees, to be paid by the parties for whom the bill is  
taxed, and included therein, as may be fixed by resolution  
of the house.

26. The parties entitled to expenses, or their represen- Expenses how  
tatives, may demand the amount certified from any of the recovered.  
persons liable therefor, and on non-payment may recover  
the same by action of debt in the Supreme Court, wherein  
it shall be sufficient for the plaintiffs to declare that the  
defendants are indebted to them in the amount certified by  
virtue of this Chapter; and the certificate signed by the  
Speaker shall have the effect of a warrant to confess  
judgment, and the Court shall, on motion, and the production  
of the certificate, enter judgment for the plaintiffs for the  
amount specified in the certificate in the like manner as if  
the defendants had signed a warrant to confess judgment  
in the action for that amount.

27. Where the expenses shall have been recovered from A party paying  
any person, he may recover in like manner from others, may recover a  
liable to the payment of the same expenses, a proportion- rateable contri-  
able share thereof, according to the number liable. bution.

28. The words "sitting member," when used in this Explanation of  
Chapter, shall also comprehend parties admitted to oppose the words sitting  
a petition. member.

29. The Provincial Secretary shall not hereafter serve Prov. Secretary  
on an election committee; and if any other member of the exempt.  
administration be drawn, he shall be excused on declaring  
upon oath, to be administered by the Clerk or Assistant, How member  
at the clerk's table, that his attendance on the committee of Government  
would be prejudicial to the public service, by interfering to be excused.  
with his official duties, or his attendance at the council  
board.

CHAP. 7.

## CHAPTER 7.

## OF VACATING SEATS.

Seats how vacated.

1. 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.

2. If any member shall accept of 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, Treasurer, Commissioner of Public Works and Mines, Commissioner of Crown Lands; 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 of the same or of any other of such offices, he shall not thereby vacate his seat in such Assembly.

Vacancies how supplied.

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

Speaker's seat how vacated.

4. 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.

## TITLE II.

OF PROVINCIAL PROPERTY: ITS REGULATION  
AND MANAGEMENT.

## CHAPTER 8.

## OF THE CASUAL AND TERRITORIAL REVENUE.

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

2. The several casual and territorial revenues of the Crown, and the moneys 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. Of what it consists.

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 Transfer of Mines and Minerals.



**CHAP. 8.** 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.  
Collection 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.

Proceeds of Crown Lands where payable.

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.

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.

## CHAPTER 9.

CHAP. 9.

## OF MINES AND MINERALS.

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.

Definition of terms used in Chapter.

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.

Mines office when open.

Applications at other times void.

3. The Governor in Council shall continue to be 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 Commissioners 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

Governor in Council to appoint Commissioner of Public Works and Mines and Deputy Commissioners of Mines.

Commissioner and Deputies to have powers of Justices in certain cases.

**CHAP. 9.** 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 Deputy Commissioner of Public Works and Mines for Province.

Such Deputy to have powers of a Justice.

Governor in Council may appoint Inspector of Mines.

Duty of Inspector.

Salary.

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

Shall not be interested in Mines, &c.

Deputies ineligible to Assembly.

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.

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 salary of the Inspector of Mines shall be fixed by the Governor in Council.

6. The Commissioner of Public Works and Mines, the Deputy Commissioner of Public Works and Mines, the Deputy Commissioners of Mines and the Inspector 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 a penalty of one thousand dollars for every offence, to be recovered in the Supreme Court.

7. The Deputy Commissioner of Public Works and Mines, the Deputy Commissioners of Mines, and the Inspector of Mines, 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.

CHAP. 9.

Shall take no part in elections.

#### OF GOLD MINES.

8. The Governor in Council, on being satisfied of the discovery of gold 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.

9. Quartz mines shall, so far as local peculiarities or other circumstances may permit, be laid off in areas of one hundred and fifty feet along a quartz lode, 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.

10. 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.

11. 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.

12. There shall be kept at the office of the Commissioner a book of record for each proclaimed gold district, and one for all unproclaimed districts or places in which applications for areas are made, wherein shall be entered all applications for areas, with the precise times of their being made, shewing 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

Record of applications for areas.

**CHAP. 9.** 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 Deputy Commissioner of Public Works and Mines for Province.

Such Deputy to have powers of a Justice.

Governor in Council may appoint Inspector of Mines.

Duty of Inspector.

Salary.

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

Shall not be interested in Mines, &c.

Deputies ineligible to Assembly.

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.

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 salary of the Inspector of Mines shall be fixed by the Governor in Council.

6. The Commissioner of Public Works and Mines, the Deputy Commissioner of Public Works and Mines, the Deputy Commissioners of Mines and the Inspector 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 a penalty of one thousand dollars for every offence, to be recovered in the Supreme Court.

7. The Deputy Commissioner of Public Works and Mines, the Deputy Commissioners of Mines, and the Inspector of Mines, shall be incapable of being elected to or of

- CHAP. 9.** covering the areas from which the gold was obtained, in respect of which such royalty was paid: and each Deputy shall keep a similar book of record for the gold district over which he has jurisdiction, in which similar entries shall be made respecting such district; and each Deputy shall each 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.
- Records kept by Deputies.**
- Returns to Mines office.**
- Plans of gold districts to be kept in Mines office.**
- Duplicates kept by Deputies.**
- Applications for areas, to whom made.**
- Applications, how made.**
- Mining leases, how executed.**
13. 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 the 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.
14. All applications for 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.
15. Every application shall be in writing, defining the area or areas applied for, and shall be accompanied by a payment (except in the case of free claims under the provisions of this Chapter) 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.
16. 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, the by such Schedule; and shall be subject to, and contain or, 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 making entry on such lands, obtain from the owners thereof permission to enter, either by special agreement or in accordance with the provisions of this Chapter.

CHAP. 9.  
Form of leases.

17. 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, 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 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.

18. 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 within the time limited therefor in the notice provided for by the next preceding section, the Custos of the county 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.

## CHAP. 9.

Mode of assessing damages by arbitrators.

19. 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, 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. 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 Custos of the county 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.

20. 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 Custos of the county 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 Custos and lessee shall each appoint an arbitrator, and all further proceedings shall be in accordance with the provisions of this Chapter; and the Custos shall receive all moneys awarded in such case, and pay the same over to the County Treasurer; 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 Custos, who shall pay the same to the County Treasurer.

Party paying money under award not further liable.

21. 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 CHAP. 9. prosecute their claims by action for money had and received against the persons to whom the payment shall have been made.

22. 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 County Treasurer 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.

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

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

25. 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. Licenses or leases liable for damages arising from works.

26. 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 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. Term of lease, &c.

27. Such leases may be forfeited on failure to pay the stipulated royalties—other than those arising from quartz crushed 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. Leases, how forfeited.

**CHAP. 9.**

How lessee shall use demised lands.

28. 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.

29. There shall be employed each year on the demised premises a number of days' labor equivalent to one hundred 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 one, in any gold district, will 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.

Proviso.

Mode of computing number of days' labor.

30. 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 tacked and 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.

31. 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.

CHAP. 9.

Partial forfeiture of mining areas, proceedings in case of.

32. When, from any cause whatever, a leased mine shall become forfeited to the Crown, under the proceedings directed by the sixty-seventh section of this Chapter, 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.

Forfeited mine vested in crown.

Proviso.

33. Applications may be made for a lease of a mine upon lands not lying within any proclaimed gold district; and in such case the rights of parties and the proceedings to be taken with reference thereto, shall be governed, as far as possible, by the spirit and provisions of this Chapter. Parties occupying and staking off areas corresponding in size with those prescribed hereby, shall be entitled to priority in the order of their making application. Every such applicant 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 applied for, from the office of the Commissioner at Halifax. In case the lands so applied for shall afterwards be included within any gold district, and laid off as hereinbefore prescribed, the rights of the occupants shall be respected so far as is consistent with the terms of this Chapter, on adjusting the boundary lines between the parties in occupation.

Applications for leases elsewhere than in proclaimed districts, &c.

## CHAP. 9.

Mining areas  
leased before 1st  
April, 1864.

Assessment of  
damages.

Prospecting li-  
censes.

Shape and size  
of prospecting  
areas.

Duration of li-  
cense.

Applications for  
prospeoting li-  
censes.

Bond to be given  
by applicant.

Damages against  
licensee, how as-  
sessed.

34. In all cases where mining areas have, previous to the first day of April, 1864, been leased, or have been occupied by virtue of a Gold Commissioner's authority, on private lands not subsequently re-vested 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 seventeenth 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.

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

36. Any such license may include any area not exceeding one hundred acres 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.

37. Such license shall be in force for any period not exceeding three months from the date thereof.

38. 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 acre for every acre up to ten acres in extent, and of twenty-five cents for every acre in addition to that extent.

39. Before such license shall be granted 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.

40. 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 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

17 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 Custos of the county may appoint an arbitrator on behalf of either of such parties neglecting or refusing to make such appointment. CHAP. 9.

41. 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 three months, upon like terms and conditions, except that the price of the same space shall be only half that paid on the previous application. Renewal of li-  
cence.

42. 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. Licensee may se-  
lect areas for  
lease.

43. 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, and 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. Lessee or licen-  
see not to enter  
upon buildings,  
gardens, &c.  
  
Exception.

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

45. Any miner or person building an efficient crusher of not less than eight stamps, in a locality not less than ten miles from any other efficient crusher, shall be entitled to a lease of not more than ten number one mining areas, free from advance payment or royalty, for twenty-one years. Such lease shall contain all the conditions and stipulations of ordinary gold mining leases excepting stipulations for payment of royalty. Person building  
crusher exempt  
from royalty in  
certain cases.

46. It shall not be lawful for any person to use or employ any mill or machinery (other than mills or machinery worked by hand) for the crushing or reduction of quartz, or the obtaining of the gold therefrom by crushing, stamping, amalgamating, or otherwise, without a license therefor first had and obtained. Mills must be li-  
censed.

47. Such license shall be signed by the Commissioner of Mines. By Commis-  
sioner.

48. The words "Licensed Mills," when used in this Chapter, shall signify mills and machinery so licensed, and the words "Licensed Mill Owner," the person or persons to whom such license shall be granted. Licensed mills,  
&c., defined.

**CHAP. 9.**

Bond to be given  
by mill owner.

49. 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.

Licensed mill  
owners to keep  
books of ac-  
count.

50. 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 crushed, amalgamated, or reduced 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 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 from each such parcel or lot.

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

VI. The mine or area (so far as the same is known or can be ascertained) from which each such parcel or lot was raised.

Mill owner to  
pay royalty.

51. 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.

Mill owner not  
paying royalty  
liable to action.

52. 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.

Mill owner to  
make monthly  
returns under  
oath.

53. 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 CHAP. 9. fiftieth 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 by the Commissioner of Mines, subject to appeal, as prescribed in section 56 of this Chapter.

54. Any owner or part owner of any mill or machinery for the crushing or reduction of quartz or for the obtaining of gold therefrom (other than mills or machinery worked by hand) which shall be engaged, used or employed for the crushing or reduction of quartz, or the obtaining of gold 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. Penalty for unlicensed milling.

55. 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. Fraud, how punishable.

56. The Commissioner of Mines shall have authority to inquire into any such alleged fraud, and to revoke such license if satisfied that such fraud has been committed; but his judgment shall be subject on appeal to the revision 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 thinks fit may order any question of fact to be tried by a jury. Decision of Commissioner not final.

57. In addition to the forfeiture of license, any licensed mill owner in respect of whose licensed mill such fraud shall have been committed, 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. Further penalty for fraud.

58. Every licensed mill owner who shall in all respects have complied with this Chapter shall be entitled to receive 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 per centage shall be paid in the case of free leases. Commission to license a mill owner. Exception.

## CHAP. 9.

Mill license, how  
surrendered.

59. A licensed mill owner may at any time surrender 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.

Effect of surren-  
der.

60. Upon such a surrender taking effect as aforesaid, such mill shall cease to be a "Licensed Mill," until again licensed under the provisions of this Chapter.

Construction of  
mill owner's  
bond.

61. The licensed mill owner so surrendering his license 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.

Lessees of mines  
to make quarter-  
ly returns.

62. Lessees of mines shall be bound to make to the 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 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 sent by him during the quarter to any licensed mill, and the name and description of the mill 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 obtained from the mine in any manner during the quarter, distinguishing that resulting from the quartz crushed at licensed mills from the gold otherwise obtained.

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.

Lessee's liability  
for royalty.

63. The lessee of each mine shall be liable for royalty upon all gold obtained from his mine in any other way than from quartz crushed by licensed mills; but he shall be exempt from any claim in respect of gold obtained from



quartz so crushed, the liability of the mill owner for such royalty being substituted for that of the lessee. **CHAP. 9.**

64. When any parcel of quartz from a free mine shall have been crushed at a licensed mill, the owner of the quartz, 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. Royalty repaid to owner of free mine.

65. 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 63 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. Lessee not paying royalty liable to action.

66. 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. In name of Commissioner as for private debt.

67. In any case of liability to forfeiture of any gold mining lease for non-compliance by the lessee with the terms, stipulations, and conditions therein contained, or by this Chapter required, the Deputy Commissioner for the District, or (if the leased premises are not within a proclaimed gold district, or are in a gold district where there is no Deputy Commissioner) 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 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 and another in that of the Deputy for the District, if any there be, 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 Lessee to receive thirty days' notice of intended forfeiture of lease.

Duplicate notices, where posted, and how long.

**CHAP. 9.** the case, with the decision and the date of such decision briefly noted thereon.

Proceedings antecedent to forfeiture.

Judgment of forfeiture, form of.

Deputy to forward decision, &c., to Commissioner.

Appeal from Deputy to Commissioner.

Appeal from Commissioner to Judge, how made.

68. At the time and place appointed the Commissioner or Deputy who issued the notice shall proceed to investigate such case, and the service and 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 or Deputy, as the case may be, 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 in schedule F, and shall be signed by the Commissioner or Deputy Commissioner who shall have heard the case.

69. In case the judgment is given by a Deputy Commissioner he shall in every case forward to the Commissioner of Mines the decision, with all papers connected therewith; and such Deputy Commissioner shall keep true copies of such papers in a book to be kept for that purpose.

70. If within thirty days after the decision the lessee, against whom the decision was made, or any person acting on his behalf, give notice to the Commissioner of Mines that he is aggrieved at the decision of the Deputy Commissioner, and appeal against it, the Commissioner shall appoint a time and place for hearing such appeal, of which such lessee shall have reasonable and timely notice; and at such time and place the Commissioner shall proceed to investigate the case anew and decide upon the whole facts thereof.

71. From the judgment of the Commissioner of Mines, either in the first instance or on appeal, the party interested may appeal to a Judge at Chambers, provided that notice of such appeal be given to the Commissioner of Mines, if in the first instance within thirty days, or on appeal within ten 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 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.

72. 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. CHAP. 9.  
Decision of  
Judge.

73. 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. He may refer  
questions of fact  
to a jury.

74. 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 a Deputy Commissioner without appeal, 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. Final judgment,  
effect of.

75. No applications for leases, or prospecting licenses for forfeited areas, shall be received until the time limited for appeal has expired, and all appeals are finally determined, and the judgment declaring forfeiture registered, as herein provided. No applications  
for forfeited  
areas received  
until final judg-  
ment.

76. The Commissioner of Mines shall have power by 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. Judgment of  
forfeiture, how  
enforced.

77. Any person found mining in any lands belonging to the Crown, or to a private proprietor, the minerals in Penalty for un-  
authorized min-  
ing.

**CHAP. 9.** 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.

Each day a distinct offence.

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

Mode of prosecuting for such mining.

79. On complaint in writing made to any Justice of 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 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 Justice's decision.

80. 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 shall be personal property of owner of mine. How recoverable.

81. Gold 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 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.

82. 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.

83. 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 a license to

search, or a license to work, of any area other than a gold area, may appeal from such decision to the Supreme Court, at the next Term thereof, at Halifax. CHAP. 9.

84. 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 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. Manner and conditions of appeal.

85. The provisions of the foregoing sections from 8 to 84, both included, shall apply exclusively to gold mines; except where any of such sections are expressly mentioned to apply to mines other than gold mines, or where the provisions of such sections are extended to mines other than gold by the subsequent sections of this Chapter. Sections 8 to 81, both inclusive, to apply only to gold mines. Exceptions.

#### OF MINES OTHER THAN GOLD MINES.

86. 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 under license or lease for mining purposes, and to dig and explore for such minerals, other than gold, as the Crown holds for the benefit of the Province; a bond being first given to the Commissioner of Mines with sufficient sureties, to be approved by a Committee of the Executive Council, that in the event of entry being made upon private lands, recompense shall be made for damages in the manner hereinafter provided. Licenses to search, how granted.

87. 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. License not to cover more than 5 square miles.

## CHAP. 9.

Survey and description of lands, &c.

88. 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 43 of this Chapter are forbidden to be entered upon, except as in that section excepted.

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

89. 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 Government; 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.

90. 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.

Separate licenses to search over same area granted under certain conditions.

91. When a license to search for mines other than gold has been granted, it shall be lawful for the Commissioner of Mines to grant other licenses to search over the same area; provided that he shall grant no more licenses than there are areas, of one square mile each, contained within the area so first licensed; and after the first licensee has chosen his one square mile the others shall select theirs in the order of their licenses—provided that the right of search of the second licensee and his license shall commence immediately after the expiration of the license or renewed license of the first licensee or on the selection of his square mile by the first licensee; and the third license shall commence at the end of the right of search of the second or his selection of his square mile as aforesaid, and so on until the whole area is disposed of.

Damages ascertained as in case of gold mines.

92. 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.

93. 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.

94. 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.

CHAP. 9.  
Survey, &c., of square mile at cost of licensee.

95. 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 17 to 25 inclusive, and to the occupation of such lands as set forth in section 28, and to the exemption of certain descriptions thereof from liability to be entered as specified in section 43, and to the vesting of interests forfeited under this Chapter, as specified in section 32, shall be applicable and in force in the case of mines other than gold mines, equally as in gold mines.

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

96. Upon complying with the requirements of this Chapter the applicant shall be entitled to a license to occupy and 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 of license to occupy and work.

97. Every license to occupy and 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 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 areas adjoining each other, not to exceed five areas, the Commissioner of Mines shall determine what shall be sufficiently effective mining operations over all the areas combined.

License to work to cover two years from application, and renewable for one year.

98. The holder of a license to occupy and work, or those representing him, having complied with the terms of the last preceding section, 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.

Case of holder of several adjoining areas.

Lease how grantable to holder of license to work.

99. Any party may apply for a license to occupy and work any vacant mine, without having previously obtained or applied for a license to search, and in such case his

License to occupy and work in first instance, how granted.

**CHAP. 9.** 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 occupy and work.

Governor in Council may permit lease or license to occupy and work covering more than a square mile.

100. The Governor in Council may, by special order, authorize the granting a lease, or license, to occupy and work a larger area than one square mile, if on investigation of the special circumstances of the case he may think the public interests would be better subserved thereby, and in such case may impose such further conditions, not at variance with the spirit of this Chapter as may be deemed just.

Leases executed in same manner as gold leases.

101. Leases of mines other than gold 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 16 of this Chapter for leases of gold mines.

Form and duration of leases of coal mines.

(a) Leases of coal mines shall contain all the conditions, provisions, provisoes, and reservations heretofore contained in such leases, or that may be required under the provisions of this Chapter, and shall terminate on or before the twenty-fifth day of August one thousand eight hundred and eighty-six.

Of other mines.

(b) Leases of mines other than gold or coal mines shall be for the term of twenty years, and shall contain all the conditions, provisions, provisoes, 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 provided in section 102 as to coal mines, but such renewals shall not extend or be construed to extend to a period beyond sixty years from the date of the lease.

Renewals not to extend beyond 60 years.

Surrender of lease same as of gold lease.

(c) 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 mining lease.

Coal lease not transferable without permission of Governor in Council.

(d) 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 signi-



fed under the hand and seal of the Commissioner of Mines. CHAP. 9.

102. Lessees of coal mines in this Province, their executors, administrators and assigns, holding leases from the Crown, or from the Commissioner of Mines, made since the first day of January, A.D. 1858, or hereafter to be made, shall, upon giving notice in writing to the Commissioner of Mines at least six months previous to the expiration of such 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, 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: 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 109 of this Chapter; and provided that in no case shall such renewal or renewals extend, or be construed to extend, to a period beyond sixty years from the twenty-fifth day of August, A.D. 1886.

Coal leases, how renewable.

Limitation.

103. New leases in accordance with the provisions of this Chapter may be executed to all parties now holding leases which will expire in the year 1886.

New leases grantable to holders of existing leases.

104. The General Mining Association shall, at the expiration of the term of their lease, be entitled to a renewal as respects each mine that shall then be worked by them, upon the same terms as apply to other lessees; but the renewed lease shall not include in respect of each mine worked a larger area than would be granted to other persons or companies; so that all leases of coal mines may, after the expiration of the Association's lease, stand on an equal footing as regards areas and otherwise.

Renewal of lease of General Mining Association.

105. 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

In future leases barrier 10 yards in width reserved around areas.

Under water twenty-five yards.

**CHAP. 9.** 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.

**Royalties.** 106. All ores and minerals (other than gold) mined, wrought, or gotten under authority of licenses and 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 :

**On coal.** Nine cents and seven-tenths of a cent on every ton of two thousand two hundred and forty pounds of coal, ex-

**Exceptions.** cept (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 ; and pro-

**Proviso.** vided 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.

**On iron.** Three cents on every ton of two thousand pounds of iron ore ; and five per cent on the value of all other ores or minerals.

**Other ores.** Such royalties shall be paid quarterly on the first days of January, April, July, and October, in each and every year (except where otherwise stipulated in the license or lease), and shall be paid to such persons and in such places as the Governor in Council may direct.

**Payable quarterly.** 107. Where a lessee of mines other than gold holds leases of two or more, but not exceeding five, contiguous areas of a square mile each, such leases may be treated as a single lease, as in the case of leases of gold mines ; provided, nevertheless, that payments of royalty shall be made on each square mile as if in a separate lease ; and that if such lessee shall in any one year have wrought or gotten more than two hundred and fifty thousand tons of coal, liable for royalty, from the mine or mines held under such leases, there shall be no reduction of royalty upon such surplus from nine cents and seven-tenths of a cent to six cents and forty-eight hundredths of a cent per ton, except upon so much thereof as shall in the aggregate exceed two hundred and fifty thousand tons for every square mile so included.

**Under certain conditions two or more contiguous areas may be treated as one.**

108. 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 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.

CHAP. 9.  
Quarterly returns of mine, when and how made, and how verified.

Such returns shall be sworn to by two 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.

109. 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 in 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 six 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 six months, the lessee or his assignee shall not commence and prosecute effective mining operations, to the satisfaction of the Commissioner of Public Works and Mines, according to the true intent and mean-

Proceedings in case mine is not worked.

**CHAP. 9.** ing of the terms, covenants and stipulations in the lease contained, and of this section, such mining areas so leased shall not be forfeited.

Evidence as to mining operations and decision as to forfeiture.

110. 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 109.

Commissioner's decision.  
Form of.

111. The decision of such Commissioner shall be in the form in Schedule F; and the lessee or assignee may appeal to the Supreme Court or a Judge thereof at Chambers, against such decision; but, before an appeal shall be allowed, he shall file with the Prothonotary of the Supreme Court a bond with two sureties, to be by him approved, to abide the judgment of the Court or Judge and pay the costs, as in Schedule G.

Appeal from.

Notices how posted where areas are under water.

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

Forfeited mine relet only on conditions determined by Governor in Council.

113. Whenever a coal mine shall become forfeited under this Chapter, such mine shall not be relet or re-granted by the Commissioner, except upon such terms as may be determined by the Governor in Council.

Mining maps of Province, and register to be kept in Commissioner's office.

114. There shall be kept in the office of the Commissioner of Mines, maps of the different mining districts in the Province, on which shall be delineated as accurately as may be, all the areas under license or lease, as mines other than gold mines; and also a book or 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.

Sections 86 to 114 applicable only to mines other than gold mines.

115. The provisions of the foregoing sections, from 86 to 114, both inclusive, shall apply only to mines other than gold mines.

#### MISCELLANEOUS.

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

116. 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 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, upon such terms as the Governor in Council shall authorize and direct. CHAP. 9.

117. 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." No mining lease void because not recorded in Registry of Deeds.

118. 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; 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 Mines, under such regulations as the Governor in Council shall make. Governor in Council may proclaim gold districts.

119. The Governor in Council is authorized to make rules and regulations relative to gold districts and gold mines, and mines other than gold 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. Governor in Council may make mining regulations not inconsistent with law.

120. 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.

121. 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 Lessee or licensee of submarine areas may tunnel from adjacent lands.

**CHAP. 9.** land in which such tunnels shall be made, and the intervening land covered with water, and the mines therein contained.

**Damages, how assessed.**

122. The damages of such tunnelling shall be agreed for, determined, settled, and paid, as directed in this Chapter from section 17 to section 25, inclusive, and also section 95.

**In case of disagreement Commissioner shall determine location, size, number, &c., of tunnels.**

123. 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.

**Plan.**

**Mining leases in duplicate. Registered in Mines office.**

124. 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.

**Certificate of registry.**

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

**Certain existing leases to be registered.**

126. 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.

**Declaration of interest in case of several lessees.**

127. In case of lease, where there are more than one lessee, a declaration in duplicate shall be made and signed under seal by all the lessees, or their heirs and assigns, stating the proportion owned by each lessee.

**Proved and registered.**

128. 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.**

129. 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.**

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

131. Every company incorporated under this Chapter **CHAP. 9.** or any act of the Legislature for mining purposes, shall file a copy of their charter or act of incorporation 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.

Every Company shall file copy of charter and list of officers with Commissioner before beginning work.

132. 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, 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.

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

Also licenses.

Otherwise void in certain cases.

133. 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.

Duplicate or certified copy to be filed.

134. 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 may be leased to any other person.

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

135. Any person leaving any pit, hole, or excavation for the space of eight days, open, and unfilled to the depth of three feet or more, without having the same walled or fenced around, at least four feet in height, at all times when not working the same, shall forfeit for each offence a sum not exceeding one hundred dollars, to be recovered by any person who will sue for the same.

Penalty for leaving pit open.

136. Parties violating the provisions of the preceding section shall be guilty of a distinct offence for every day that such pit, hole or excavation shall remain open and unfilled, or without the proper wall or fence.

Each day a distinct offence.

## CHAP. 9.

Commissioner  
and deputies  
may cause wit-  
nesses to be  
sworn.

137. 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.

No application to  
be received for  
raising rights in  
dispute before  
Commissioner or  
deputies.

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.

Royalties how  
collectible,  
where unpaid.

138. 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.

On what days  
leases shall ter-  
minate.  
New leases  
grantable next  
day.

Prov. 10.

139. 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.



140. 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.

CHAP. 9.  
Change of ownership of mining lease in certain cases to be authenticated by declaration.

141. 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.

Evidence to accompany such declaration.

142. 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.

Commissioner to register name of new owner.

143. 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.

Alternative title of chapter allowed.

#### SCHEDULE A.

This Indenture, made this — day of —, in the year of our Lord one thousand eight hundred and seventy — between the Queen's Most Excellent Majesty, of the one part, and —, hereinafter described as lessee, of the other part:

Witnesseth, That in consideration of the royalties hereby reserved, and of the covenants and agreements herein

CHAP. 9. contained, and on the part and behalf of the said lessee, his 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 lessee, his 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, gold-bearing quartz, and other gold-bearing rocks, and gold-bearing earth, and all the gold, 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 lessee shall have taken proceedings in accordance with Chapter 9 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 gold-bearing quartz, and all other the gold-bearing rocks, and gold-bearing earth, and gold whether in quartz or otherwise, in, under, and upon the same, to the said lessee, his executors, administrators, 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 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 crushed by licensed mills, at the

rate of nineteen dollars per ounce Troy, for smelted gold and eighteen dollars for unsmelted gold: CHAP. 9.

And the said lessee does hereby covenant, promise and agree to and with our said Sovereign Lady the Queen, her heirs and successors, that the said lessee, his 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 lessee, his 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, and other rock containing gold, and all gold 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 earth, or other gold-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 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 from such quartz or other material, 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 lessee, his 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 sixty-second section of Chapter 9 of the Revised Statutes, "Of Mines and Minerals," verified by an affidavit

CHAP. 9. 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 lessee 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 — hundred 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 water-courses 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 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 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 lessee, for himself, his heirs, executors, administrators and assigns, do accept this grant or demise under the condition that in case default shall be made by the said lessee, his executors, administrators or assigns, in keeping such book or books of accounts, 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 herein before 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 in these presents notwithstanding :

Provided always, nevertheless, that it shall and may be lawful for the said lessee, his 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 he is 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 lessee in the demised premises shall forthwith revert in her said Majesty, and the said lessee, his 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 mined or obtained up to the date of said surrender or in any other way than from quartz crushed at licensed mills :

Provided also further, And it is the true intent and meaning of these presents, that the said lessee, his 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.

In witness whereof, Our said 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 lessee has subscribed his hand and seal thereto.

Signed, sealed, and delivered, by the	}	[L.S]
said Commissioner of Public Works		
and Mines in presence of ———	}	[L.S]
By the said lessee, in presence of ———		

#### SCHEDULE 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.

**CHAP. 9.** 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—. }

### SCHEDULE 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.

## SCHEDULE 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.

## SCHEDULE E.

To A. B. and C. D., lessees 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.

CHAP. 9.

## SCHEDULE F.

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.

## SCHEDULE 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.

L. . . . .	Signed, sealed, and delivered in presence of }	G. H.	(L. S.)
		J. K.	(L. S.)



## CHAPTER 10.

CHAP. 10.

## OF THE REGULATION OF MINES.

1. This Chapter may be legally cited, when desirable, as "The Mines Regulation Chapter." Alternative title'

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: Definition of terms used in Chapter.

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 "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, 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 daily supervision of the underground workings.

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. Questions as to character of mines decided by Commissioner.

CHAP. 10.

## EMPLOYMENT OF BOYS.

No boy under ten to be employed in any mine.

4. No boy under the age of ten years shall be employed in or about, or allowed to be for the purpose of employment in or about any mine below ground or above ground.

Time of employment of boys between 10 and 12 under ground.

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 more than sixty hours in any one week, or more than ten hours in any one day.

Regulations as to employment of boys 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,

- (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.

As to employment of young persons about engines.

7. Where there is a shaft or an inclined plane or any other communication from one part of a mine to another part of such mine, and persons are taken up or down along such shaft, plane, or level by means of any engine, windlass, or gin, driven or worked by steam or any other mechanical power, or by an animal, or by manual labour, no 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 at least eighteen years of age.

Where the engine, windlass or gin is worked by an animal, the person under whose direction the driver or 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 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 engines, 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 t

Proviso.

best of his power enforcing the provisions of this Chapter CHAP. 10.  
to prevent such contravention or non-compliance.

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.

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. No wages to be paid at public houses, &c.

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. As to payment of persons employed in mines by weight.

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. Provided.

CHAP. 10. 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.

Check weigher  
on behalf of mi-  
ning employes,  
his appointment,  
duties, and re-  
moval.

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.

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 *primâ 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 CHAP. 10. 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.

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 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. Prohibition of single shafts.

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

**CHAP. 10.** 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.

Exceptions from provisions as to single shafts.

13. The provisions of this Chapter with respect to shafts or outlets shall not apply in the following cases; 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 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 acci-

dent, 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. CHAP. 10.

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. Commissioner to decide upon applications for extension of time to provide additional shafts.

#### RETURNS, NOTICES AND ABANDONMENT.

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 9, "Of Mines and Minerals," and such other information and at the stated times specified in such Chapter: Returns by lessees, owners, agents and managers of mines.
- (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 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.

**CHAP. 10.** 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.

Written notice  
to be given of ac-  
cidents in mines.

16. Where in or about any mine whether above or below ground, either

(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 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 own-  
ership or work-  
ing of mines.

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 CHAP. 10.

(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.

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: Fencing of abandoned mines.

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. Plans of abandoned mines to be sent to Commissioner.

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

CHAP. 10.

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.

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 fifteen 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.

Ten days' notice of the time and place where the Commissioner will hear such evidence shall be given to the parties interested. CHAP. 10.

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 ten 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 ten 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 shall keep in the office at the mine an accurate plan of the workings of such mine, showing the workings up to at least twelve months previously. 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 the owner, agent or manager of every mine leased by the Crown shall furnish to the Inspector a correct copy of such plan when requested by the Inspector.

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

**CHAP. 10.** 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.

Commissioner may require special reports as to accidents.

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 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, 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: CHAP. 10.

- (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; 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.

#### 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, then once in every twenty-four hours if one shift of workmen is employed, and once in every twelve hours if two shifts are employed during any twenty-four hours, a competent person or persons, who shall be appointed for the purpose, shall, before the time for commencing work in any part of the mine, inspect with a safety lamp that part of the mine, and the roadways leading thereto, and shall make a true report to the manager 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.

- CHAP. 10. (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, so far as is reasonably practicable immediately before time for commencing work in any part of the mine, 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. CHAP. 10.

- (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 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. Safety lamps.

(8.) Gunpowder or other explosive or inflammable substance shall only be used in the mine underground as follows: Gunpowder and blasting.

- (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:

CHAP. 10.

- (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 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.
  - (c.) 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 gun-powder 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, 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.



(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 or other operations, if proper precautions are used. CHAP. 10.  
Fencing of entrances to shafts.

(15.) Where the natural strata are not safe, every working or pumping shaft shall be securely cased, lined, or otherwise made secure. Securing of shafts.

(16.) The roof and sides of every travelling road and 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. Securing of roofs and sides.

(17.) In any mine which is usually entered by means 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. Person shall attend hoisting machinery.

(18.) Every working shaft used for the purpose of 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. Signalling on working shafts.

(19.) A sufficient cover overhead shall be used when 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. Cover over-head in shaft.

(20.) A single-linked chain shall not be used for lowering or raising persons in any working shaft or place except for the short coupling chain attached to the cage or load. Chains.

(21.) There shall be on the drum of every machine 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. Slipping of rope on drum.

(22.) There shall be attached to every machine worked 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. Break and indicator.

- CHAP. 10.** (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.
- Machinery fenced.**
- (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.
- Gauges and safety valves on boilers.**
- (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.
- Ladders.**
- (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.
- Dressing rooms.**
- (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.
- Certain shafts how used.**
- (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.
- Wilful damage, &c.**
- (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.
- Observance of directions.**
- (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.
- Daily inspection of machinery and works.**
- 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 **CHAP. 10.**  
 contravention of, or non-compliance with any of the said Contravention of  
 section offence  
 against Chapter.  
 general rules in the case of any mine by any person whom-  
 soever 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 pub-  
 lishing, 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.

*Special Rules.*

26. The owner, agent or manager of any mine may if Special rules in  
 mine.  
 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 dan-  
 gerous 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.

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 best  
 of his power enforcing the said rules as regulations for the  
 working of the mine to prevent such contravention or  
 non-compliance.

27. The proposed special rules, together with a printed Special rules,  
 how established.  
 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.

**CHAP. 10.** 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.

**Abstract of Chapter published.**

30. For the purpose of making known the special rules, if any, and the provisions of this Chapter, to all persons

employed in and about each mine, an abstract of the CHAP. 10.  
Chapter supplied on the application of the owner, agent  
or manager of the mine, by the Commissioner, and an entire  
copy of the special rules, (if any), shall be published as  
follows:

- (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.

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. Defacing notices.

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. Certified copy of special rules to be evidence.

CHAP. 10.

## PENALTIES.

Other employes  
liable same as  
owners, &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.

In certain cases  
owner, &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, &c.,  
recovered in  
name of In-  
spector.

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 of law in which ordinary private debts of a like amount are sued for and recovered.

Proceedings  
within three  
months.

37. Any complaint or suit made or brought in pursuance of this Chapter shall be made or brought within three months from the time when the matter of such complaint or suit respectively arose.

Owner, &c., can  
be witness.

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.

Application of  
penalties.

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.

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. CHAP. 10.

Save as aforesaid, all penalties imposed in pursuance of this Chapter shall be paid on receipt of the same into the Provincial Treasury.

MISCELLANEOUS.

40. In the working of coal and other minerals in submarine areas : Regulations as to working of 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.) 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

**CHAP. 10.** with any provision of this section shall each be liable to a 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 of the Attorney General prohibit by injunction the working of such mine.

Minerals to be weighed.

41. 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.

42. 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.

43. 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. 10.

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 10 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.



7. Subject to the provisions hereinafter contained, any person upon due application to the Commissioner of Crown Lands may 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 Commissioner of Crown Lands upon his report being approved.

CHAP. 11.

Purchase, how made.

8. If at the time of any application for land there was any dwelling house on the land in which any person other than the applicant then and for a year previously had 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 Commissioner before the passing 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 Commissioner of Crown Lands 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.

When grants may be declared void.

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.

Governor in Council to decide questions of occupancy.

10. All surveyors appointed by the Commissioner of Crown Lands 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.

Chainmen sworn

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.

Surveyor may trace township line.

12. When application is made for crown lands for lumbering or other purposes than for settlement, the Commissioner of Crown Lands shall cause an accurate survey to be made of the tract applied for; and all lots reported

Application for crown land for lumbering purposes.

Lots reserved for agriculture.

**CHAP. 11.** fit for settlement shall be marked on the plan or survey and reserved for agricultural improvement.

Grants of un-reserved lots.

13. The lots not so designated and reserved may be granted at the rate of sixty cents an acre.

Extent of grants for lumbering purposes.

14. 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.

Price of lands granted for agriculture.

15. The price of crown lands granted for agricultural purposes shall be forty-four cents an acre.

Affidavit required on application.

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.

Land to be subdivided into lots.

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.

Roads may be laid out.

18. The Commissioner of Crown Lands 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.

Road-work in part payment of land.

Grants to persons in possession less than sixty years.

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 Commissioner of Crown Lands may inquire into the respective claims, and make an arrangement of 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 Chapter, "Of Pleadings and Practice in the Supreme Court," and the forms therein contained for the recovery of the possession of land in civil actions.

Penalty for cutting trees on un-granted 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, CHAP. 11. knowing the same to have been cut on such ungranted lands, he shall forfeit and pay for each of such trees, logs, spars or pieces of timber, not less than two dollars, nor more than forty dollars, to be sued for and recovered before any stipendiary magistrate or any two justices of the peace, by any person who shall sue for the same, as a private debt; and one-half of the amount recovered shall be paid to the party suing, and the other half into the Provincial Treasury.

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 Commissioner of Crown Lands 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 Commissioner, 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.

Commissioner shall notify parties who owe balances to pay within three months.

In default Commissioner may dispose of lands.

22. The Commissioner of Crown Lands 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.

Commissioner may give three months notice to quit.

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 Commissioner of Crown Lands, 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.

If possession is not given up party may be arrested.

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.

Party so arrested may be committed to jail until possession be given up, or bond given.

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

Title of Crown shall not be contested.

Proviso.

**CHAP. 11.** possession of the whole of the lands in dispute for at least twenty years.

**Court may order possession to be given by Sheriff.** 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.

**Successful party may tax costs.** 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.

**Previous remedies not affected by this Chapter.** 29. Nothing herein contained shall be construed to affect or abridge any other legal remedy for obtaining possession of crown lands.

**Bond how to be made and sued on.** 30. The bond mentioned in Sections 24 and 25 shall be made to the Commissioner of Crown Lands for the time being, and shall be in the form in Schedule A; and the same shall be sued on by the Commissioner of Crown Lands, who shall be in office at the time the same is forfeited, or his successor for the time being.

**Regulating trial of cause.** 31. As soon as the bond is executed the cause shall be placed on the summary 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.

**Judgment.** 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.

#### SCHEDULE 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 G. H., Commissioner of Crown Lands for the Province of Nova Scotia, 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 11 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 CHAP 11. 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 in presence of J. J. }	A. B.	[L. S.]
	C. D.	[L. S.]
	E. F.	[L. S.]

#### SCHEDULE B.—Record.

In the Supreme Court at \_\_\_\_\_, on the \_\_\_\_\_  
day of \_\_\_\_\_ A. D. 18—.

Our Sovereign Lady the Queen took proceedings under Chapter 11 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.

#### SCHEDULE C.

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 11 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:

**CHAP. 11.** Therefore we command you, without delay, to cause our said Lady the Queen to have the possession of 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.

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**PART SECOND.**

**OF FREE GRANTS AND HOMESTEADS.**

Crown Lands may be appropriated as free grants.

1. The Governor in Council may appropriate any crown lands—considered suitable for settlement and cultivation, as free grants to actual settlers, under such regulations as shall from time to time be made by Order in Council, not inconsistent with this Chapter.

Locatee of free grant.

2. The person to whom any land shall be allotted or assigned under such regulations for a free grant thereof, shall be considered as located for such land within the meaning of this Chapter, and is hereinafter called the locatee thereof.

Age of locatee and limit of grant.

3. No person shall be located for any land under this Chapter or such regulations, unless such person shall be of the age of eighteen years or upwards, nor shall any person be so located for any greater quantity than one hundred acres.

Preliminary affidavit to be deposited with Commissioner of Crown Lands.

4. Before any person shall be located for any land, as aforesaid, such person shall make affidavit, to be deposited with the Commissioner of Crown Lands, that he has not been located for any land under this Chapter, or under such regulations, that he is of the age of eighteen years or upwards, and believes that the land for which he applies or desires to be located, is suited for settlement and cultivation, and that such location is desired for his benefit, and for the purpose of actual settlement and cultivation of such land, and not, either directly or indirectly, for the use or benefit of any other person or persons whomsoever.



5. No grant shall issue for any land located under this **CHAP. 11.** Chapter, or under such regulations, until the expiration of When grant to issue. five years from the date of such location, nor unless, nor until, the locatee or those claiming under him, or some of them, shall have performed the following settlement duties, that is to say : shall have cleared and have under cultivation at least fifteen acres of such land, whereof at least two acres shall be cleared and cultivated annually during the five years next after the date of the location, to be computed from such date, shall have built a house thereon fit for habitation, at least sixteen feet by twenty feet, and shall have actually and continuously resided upon and cultivated such land for the term of five years next succeeding the date of such location, and thence up to the issue of the grant ; except that the locatee shall be allowed one month from the date of the location, to enter upon and occupy the land, and that absence from such land for, in all, not more than six months during any one year, (to be computed from the date of the location), shall not be held to be a cessation of such residence, provided such land be cultivated as aforesaid.

6. On failure in the performance of the settlement Forfeiture of location. duties aforesaid, the location shall be forfeited, and all right of the locatee, or of any one claiming under him, in the land shall cease.

7. On the death of the locatee, whether before or after Descent. the issue of the grant for any land so located, leaving a widow him surviving, all his then right and interest in and to such land shall descend to and become vested in his widow during her widowhood in lieu of dower ; but such widow may elect to have her dower in such land in lieu of the provision aforesaid.

8. Neither the locatee nor any one claiming under him Power to alienate or encumber. shall have power to alienate (otherwise than by devise), or to mortgage or pledge any land located as aforesaid or any right or interest therein, before the issue of the grant.

9. No alienation, (otherwise than by devise,) and DO mortgage or pledge of such land, or of any right or interest therein by the locatee after the issue of the grant, and within twenty years from the date of such location, and during the lifetime of the wife of such locatee, shall be valid or of any effect ; unless the same be by deed, in Certain alienations void. which she shall be one of the grantors with her husband, nor unless such deed is Exceptions. executed by her in the same presence, and there are the same examination and certificate and at the same time, as shall be at the date of such deed required by law, in the case of married women conveying their real estate.

- CHAP. 12.** 10. No land located as aforesaid, nor any interest therein, shall in any event be or become liable to the satisfaction of any debt or liability contracted or incurred by the locatee, his widow, heirs or devisees, before the issuing of the grant for such land. After the issuing of the grant for any such land, and while such land or any part thereof or any interest therein is owned by the locatee, or his widow, heirs, or devisees, such land, part or interest shall, during twenty years next after the date of such location, be exempt from attachment, levy under execution, or sale for payment of debts, and shall not be or become liable to the satisfaction of any debt or liability contracted or incurred before or during that period, save and except any debt secured by a valid mortgage or pledge of such land made subsequently to the issuing of the grant therefor.
- Prior debt.**
- Exempt from levy, &c.**
11. Nothing in this Chapter shall be construed to exempt any land from levy or sale for rates or taxes, now or hereafter legally imposed.
- Land liable for rates, &c.**
- Form of grant.** 12. Every grant to be issued for land located as aforesaid shall state in the body thereof the name of the original locatee of such land, and the date of such location, and that such grant is issued under the authority of this Chapter.

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## CHAPTER 12.

### OF TRESPASSES TO CROWN PROPERTY.

- No person to cut wood, open mines, &c. without license.** 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, 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.
- Penalty.**
- 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 vigi-

lantly 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. CHAP. 12.

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. Their duties, powers, &c.

4. Immediately after seizure the seizing officer shall report the facts to the Commissioner of Crown Lands, and shall obey his instructions as to further proceedings. Proceedings after seizure.

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 Commissioner of Crown Lands, 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 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. Proceedings when parties concerned in trespass are known.

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 Commissioner of Crown Lands, 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 Commissioner of Crown Lands, who shall Disposal of proceeds in case of sale.

- CHAP. 12.** 10. No land located as aforesaid, nor any interest therein, shall in any event be or become liable to the satisfaction of any debt or liability contracted or incurred by the locatee, his widow, heirs or devisees, before the issuing of the grant for such land. After the issuing of the grant for any such land, and while such land or any part thereof or any interest therein is owned by the locatee, or his widow, heirs, or devisees, such land, part or interest shall, during twenty years next after the date of such location, be exempt from attachment, levy under execution, or sale for payment of debts, and shall not be or become liable to the satisfaction of any debt or liability contracted or incurred before or during that period, save and except any debt secured by a valid mortgage or pledge of such land made subsequently to the issuing of the grant therefor.
- Prior debt.*
- Exempt from levy, &c.*
11. Nothing in this Chapter shall be construed to exempt any land from levy or sale for rates or taxes, now or hereafter legally imposed.
- Land liable for rates, &c.*
- Form of grant.* 12. Every grant to be issued for land located as aforesaid shall state in the body thereof the name of the original locatee of such land, and the date of such location, and that such grant is issued under the authority of this Chapter.

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## CHAPTER 12.

### OF TRESPASSES TO CROWN PROPERTY.

- No person to cut wood, open mines, &c. without license.* 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, 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.
- Penalty.*
- 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 vigi-

lantly 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. CHAP. 12.

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. Their duties, powers, &c.

4. Immediately after seizure the seizing officer shall report the facts to the Commissioner of Crown Lands, and shall obey his instructions as to further proceedings. Proceedings after seizure.

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 Commissioner of Crown Lands, 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 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. Proceedings when parties concerned in trespass are known.

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 Commissioner of Crown Lands, 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 Commissioner of Crown Lands, who shall Disposal of proceeds in case of sale.

**CHAP. 12.** 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 property does not realize enough to cover expenses.

When from any cause the property seized shall not realize an adequate remuneration, the Commissioner of Crown Lands 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.

Appeal—proceedings under, &c.

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 Commissioner of Crown Lands and charged in his account.

Penalty for obstructing officers, removing property, &c.

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.

Privileges of persons impleaded for seizure under this Chapter.

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 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. CHAP. 13.

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 Commissioner of Crown Lands, who may direct the sale thereof, without proceeding to condemnation,—the proceeds of such sale to be remitted to the Commissioner of Crown Lands, to be applied as directed by section 7 of this Chapter.

Trees, timber or logs illegally cut on crown lands may be seized and sold.

Proceeds sent to Commissioner.

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.

Action where to be brought.

13. Nothing herein contained shall be construed to contravene or conflict with Chapter 9 "Of Mines and Minerals."

Not to conflict with Chapter 9.

#### SCHEDULE.

##### 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.)

CHAP. 13.

## CHAPTER 13.

## OF THE PUBLIC RECORDS.

Vested in Her Majesty.

1. The books, papers and records of all public offices provincial and county, are hereby vested in Her Majesty the Queen and her successors.

Parties taking or retaining them may be proceeded against.

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.

Mode of procedure.

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.

Order to be in discretion of Court or Judge.  
Costs.

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.

Appeal.

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 at bar, where the whole matter may be heard and disposed of as such Court may decide.



## TITLE III.

## OF PROVINCIAL OFFICERS.

## CHAPTER 14.

## OF CERTAIN PUBLIC OFFICERS, THEIR SALARIES AND DUTIES.

1. There shall be allowed to the several officers herein-  
after 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, four-  
teen hundred dollars:

To the Attorney General, sixteen hundred dollars:

To the Treasurer, two thousand dollars; and to his clerk,  
one thousand dollars:

To the Commissioner of Public Works and Mines, two  
thousand dollars; to the Chief Clerk of Mines, one thou-  
sand dollars; to the Chief Clerk of Works, one thousand  
dollars:

To the Commissioner of Crown Lands, two thousand  
dollars; to the first clerk of the Commissioner of Crown  
Lands, one thousand dollars; to the additional clerks,  
twelve hundred dollars:

To the Private Secretary of the Lieutenant Governor,  
for the time being, twelve hundred and fifty dollars.

2. The Treasurer shall give bonds for the faithful per-  
formance of the duties of his office in sixteen thousand  
dollars, with four sureties in four thousand dollars each;  
and the Treasurer's clerk shall give bonds in four thousand  
dollars, with two sureties in two thousand dollars each, for  
the faithful discharge of his duties.

3. The Provincial Secretary, the Attorney General, the  
Treasurer, the Commissioner of Public Works and Mines,  
and the Commissioner of Crown Lands, shall be members  
of the Provincial Administration for the time being.

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  
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 Treasurer until the same shall have been care-  
fully examined and certified to be correct, or any mistake

Salaries of Public officers.

Provincial Secretary.

Deputy Secretary.

Attorney General.  
Treasurer.

Commissioner of Public Works and Mines.

Clerk of Mines.  
Clerk of Works.Commissioner of Crown Lands.  
Clerks.

Governor's Private Secretary.

Treasurer's bonds.

To be members of Administration.

Duties of Provincial Secretary.

**CHAP. 14.** 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.

Duties of Treasurer.

5. The Treasurer shall receive, and on the warrant of the Provincial Secretary pay, all public moneys; and 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 Treasurer, and in what form the books to be opened thereat shall be kept; but one general cash book shall be kept by him, in which there shall be entered from day to day all moneys received and paid, with the names of the parties who received or paid the same, which book shall be open at all times to the inspection of the members of the Executive Government and Legislature.

Warrant Vouchers.

6. 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.

Treasurer's accounts.

7. The Treasurer 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 Treasurer 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.

8. 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 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.

Duties of Commissioner of Public Works and Mines.

9. The Commissioner of Public 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, the Nova Scotia Hospital for the Insane and grounds, and all other buildings and property belong-

ing 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. CHAP. 14.

10. The Governor in Council may make such regulations 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.

Governor in Council may make regulations.

11. The Governor 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 re-payment 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.

Governor may open cash account with city banks and borrow money.

May borrow from other persons, &c. Amount limited.

12. The money may be drawn for 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.

13. 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 repayment.

14. 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.

Account and vouchers to be laid before legislature.

CHAP. 15.**TITLE IV.****OF COUNTIES, DISTRICTS AND TOWNSHIPS  
AND THEIR OFFICERS.****CHAPTER 15.****OF THE BOUNDARIES OF COUNTIES, DISTRICTS AND TOWNSHIPS**

Boundary lines confirmed.

When lines uncertain, governor may order survey.

Notice to custos &c. before survey.

Sessions, duty of.

Cost of survey, how paid.

Expense of nominees, county charge. Line how decided.

1. The boundary lines of counties, districts and townships, are confirmed as at present established.

2. Whenever it shall be made satisfactorily to appear to the Governor in Council that the lines and boundaries of any county, district or township, are uncertain and require to be run out; or where the traces of such lines or boundaries have disappeared, and it shall be necessary to establish the same anew; it shall be lawful for the Governor in Council to authorize the Commissioner of Crown Lands to appoint a surveyor to perform such work, and to set up permanent marks and boundaries upon such lines.

3. Before such surveyor shall proceed to perform his duty, notice shall be given by the Commissioner of Crown Lands or the surveyor to the Custos of each county, district or township; and at any general or special sessions thereof to be holden, such sessions 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 report thereof.

4. The cost of such survey shall be paid out of the proceeds of the crown lands.

5. The expenses of the nominees for each county, district and township, shall be a county charge.

6. The award of the majority shall decide the line, and in case of no majority, the same shall be decided by the Commissioner of Crown Lands.



## CHAP. 16.

## CHAPTER 16.

## OF CUSTOS AND CLERK OF THE PEACE.

1. The Governor in Council shall appoint the Custos Custos, how appointed. for each County and District in the Province.
2. Clerks of the Peace shall be appointed by the Custos Clerks of Peace, how appointed and sworn. of the County or District during pleasure, and shall be sworn into office by the Custos or a Judge of the Supreme Court.
3. Upon the vote of a majority of the Sessions, the office of the Clerk of the Peace shall become vacant; and upon the neglect or refusal of the Custos to make an appointment within one month after such vacancy shall have happened, the Governor in Council shall appoint; but Clerks of the Peace shall continue to hold office until their successors are appointed. Vacancies provided for and how filled.
4. Every Clerk of the Peace shall cause to be engrossed in a book, kept for that purpose only and properly indexed, all rules, regulations and orders of the Sessions in force, or such as may be made, with their dates respectively, which book, together with all other papers and records of the Sessions, shall be open for inspection at all reasonable times. Duration of office.
5. Every Clerk of the Peace shall annually, on or before the tenth day of January, return in triplicate to the Provincial Secretary a list of all convictions had, and of all fines and penalties imposed by the Sessions, the amount of fines and penalties collected and how appropriated, with the names of all offenders, under a penalty of twenty dollars. Book of rules, and orders of sessions, &c.
6. No Clerk of the Peace shall receive any fee for the duties of office except in cases of licenses only. Return to Provincial Secretary.
7. The Clerks of the Peace in the several counties or districts, with the consent of the Custos, may appoint deputies to act for them in case of sickness or temporary absence, for whose conduct the principal shall be responsible; and all deputies so appointed shall have the same powers vested in them for the time being as by law are vested in the principal, and their acts shall be equally valid. Penalty for neglect.
8. When it is brought to the notice of the Governor in Council by the Custos of any County or District that he is unable to make out a Roll of the Justices of the Peace 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 When roll of Justices lost Government may call upon Justices to produce their Commissions.

**CHAP. 16.** Commissions and qualifications to the Clerk of the Peace 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 Peace; and the Clerk of the Peace 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.

Government to furnish parchment rolls, &c.

9. It shall be the duty of the Governor in Council to furnish parchment rolls to the Clerk of the Peace for such County or District where such rolls have become lost or for other sufficient cause; and the Clerk of the Peace 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 of the Peace to receive fee.

10. The Clerk of the Peace shall be entitled to receive a fee of twenty-five cents from each Justice of the Peace for such services.

Justice called upon to produce Commission, it being lost, shall make and file affidavit.

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 Peace 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.

#### 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 17.

CHAP. 17.

## OF SHERIFFS.

1. The Chief Justice and a Judge of the Supreme Court selected by him, or in the absence of the Chief Justice any two Judges selected by the senior Judge present, together, in either case, with two members of the Executive Council, shall meet in Halifax during Michaelmas Term in each year, and select three persons for each county, each of whom shall be believed to be qualified to fill the office of Sheriff, and not unlikely to act if appointed. In case of disagreement a majority shall decide the nomination; and, if a majority cannot be obtained, the Chief Justice and Judges, or a majority of those present, shall make the nomination. Out of the three persons so nominated the Governor in Council shall prick one to serve for the ensuing year; who shall reside in his county; and who, upon giving security by bond as hereinafter mentioned, shall receive his commission and be invested with the powers of office.

Sheriffs—how appointed.

2. Within fifteen days after notice of appointment, the Sheriff elect shall transmit to the Provincial Secretary's office a bond for the discharge of the duties of his office, to be made to Her Majesty, himself in four thousand dollars, with two sufficient sureties, each in two thousand dollars, authenticated by the oath of a subscribing witness, which shall forthwith be laid before the Governor in Council, who shall, within twenty days, approve or disallow the same. In case of disallowance of the bond, the Sheriff elect shall be notified thereof; and if, within a reasonable time in the discretion of the Governor in Council, he shall not transmit to the Provincial Secretary's office a bond which shall be approved by the Governor in Council, or in case the Sheriff first elect shall decline to act, or shall not transmit a bond as aforesaid, the Governor in Council shall prick another name from the list; and the person so selected shall be the Sheriff elect, and shall be notified and give security to the satisfaction of the Governor in Council in the same manner as in the case of the first selection; and in case of failure on his part, the person whose name remains on the list shall be the Sheriff elect, and shall in like manner be notified and give security to the satisfaction of the Governor in Council. If no one of the three persons in the list shall accept office and give security, the Governor in Council shall appoint a Sheriff who shall give satisfactory security in manner aforesaid.

Bonds—how given.

Proceedings in case Sheriff does not send approved bond, or refuses to act

**CHAP. 17.**

When bonds approved of Sheriff to be commissioned and old Sheriff discharged.

3. So soon as the bond of a Sheriff elect shall have been approved, it shall be deposited in the Provincial Secretary's office, and be then registered; and in case the original shall be lost or mislaid, a certified copy shall be receivable in evidence. Immediately after the approval of his bond, the Sheriff shall be commissioned; and then, but not before, the preceding Sheriff shall be discharged from his office and its responsibilities, and his sureties from their liability.

Sureties—their liability—may be relieved—proceedings if Sheriff fail to substitute others.

4. The Sheriff's sureties shall be liable under their bond until he shall be legally discharged from office, although the period may be longer than one year; but they may at any time pray the Governor in Council to relieve them; and if, upon being required, the Sheriff shall fail to substitute other and approved security within one month, the Governor in Council shall remove him from office, and appoint a Sheriff in his stead for the remainder of the term of office, on his depositing satisfactory security as aforesaid.

Sheriff may be reappointed.

Proviso.

5. The name of the Sheriff in office may be retained on the list for selection by the Governor in Council; and he may be appointed anew to the office upon his giving bond in the same manner as in other cases; unless a representation by a majority of the justices in session against him be filed in the Prothonotary's office at Halifax, before Michaelmas Term, or be transmitted to the Governor, in which case his name shall not be placed on the list, nor shall he be appointed or continued in office after Michaelmas Term.

In case of death absence, &c.

6. In case of the death of the Sheriff, his permanent absence from his county, or his incapacity to perform the duties of his office, the Governor in Council shall commission a Sheriff for the remainder of the term, to be selected from the list so nominated as hereinbefore provided, on his filing approved security as aforesaid, which shall supersede and determine the previous appointment.

Penalty for refusing office, &c., without satisfactory reasons.

7. Any person selected and nominated to the office of Sheriff, who shall refuse to accept the office, or shall fail to give satisfactory security, shall forfeit two hundred dollars; unless reasons for so refusing or failing shall be given to the satisfaction of the Governor in Council.

Form of oath to be taken before entering upon duty.

8. 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 CHAP 17.  
 uprightly in my office for the honor of the Queen and the  
 good of her subjects."

9. If any Sheriff delay more than two months after his  
 year of office expires to 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, he  
 shall forfeit eighty dollars to the use of the Crown.

Penalty for not  
 rendering ac-  
 count of forfeit-  
 ure, &c.

10. Any person injured by any act or omission of a  
 Sheriff, may sue on his bond in the name of the Queen,  
 and be entitled to the proceeds with costs. The defen-  
 dant shall be entitled to costs if judgment be given in his  
 favor; but no action shall be brought upon the bond until  
 judgment shall first have been recovered against the  
 Sheriff.

May be sued on  
 bond.

Costs.  
 Proviso.

11. In an action brought against a Sheriff, jailer or  
 other officer for an escape under an execution in a civil  
 suit, the jury shall not be bound to find for the whole  
 amount for which the prisoner was committed; but they  
 shall find a verdict for the plaintiff for such sum only as  
 they shall think right and proper under all the circum-  
 stances of the case, unless it shall appear on the trial that  
 the escape was connived at, or the officer guilty of gross  
 negligence; and in no case shall they find for more than  
 the amount for which the prisoner was committed.

In action for es-  
 cape jury not  
 bound to find for  
 whole amount of  
 debt.

12. 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 indorse  
 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.

Writs, how re-  
 turned.

13. All actions against Sheriffs must be brought within  
 three years from the accruing thereof.

Limitation of  
 actions.

14. No Sheriff or deputy sheriff shall hold a commis-  
 sion as justice of the peace; and all such commissions  
 held by Sheriffs or deputy sheriffs are hereby declared  
 null and void.

Not to be a jus-  
 tice of peace.

15. Any Sheriff or deputy sheriff acting as a justice  
 of the peace in violation of this Chapter, shall for each  
 offence forfeit the sum of eighty dollars, to be recovered  
 by any one who will sue for the same as a private debt.

Penalty—how  
 recovered.

16. The Governor in Council, with the concurrence of  
 the Chief Justice and a Judge of the Supreme Court, may  
 remove any Sheriff from office for neglect of duty or  
 misconduct in his office, and appoint and commission  
 another Sheriff in his place for the remainder of the term,  
 who shall give security for the performance of his duty as  
 by this Chapter required for Sheriffs.

How removed  
 from office.

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## CHAPTER 18.

## OF PROTHONOTARIES AND CLERKS OF THE CROWN.

- Appointments, how made.** 1. The Governor in Council shall appoint and commission one person to be Prothonotary of the Supreme Court and Clerk of the Crown in every county, as vacancies shall occur.
- Prothonotaries to make return of fees on oath.** 2. The Prothonotaries shall on or before the first day of February in every year make returns under oath into the Provincial Treasurer's office of the fees received by them.
- Prothonotaries, &c., to give bonds.** 3. The Prothonotaries and Clerks of the Crown to be 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.
- Country Prothonotaries to act as Clerks of the Crown.** 4. The Prothonotaries throughout the Province shall issue subpoenas in crown cases, and perform all such other duties as may appertain to the office of Clerks of the Crown.

## CHAPTER 19.

## OF CORONERS.

- 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 Custos of the County.
- Inquisitions, when and how returned.** 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.
- Clerk of crown to file without fee and give certificate.** 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 inquest on a Sunday.
- Juries, how summoned.** 4. Upon the certificate of such Clerk of the Crown being filed with the Provincial Secretary, he may draw a warrant on the Provincial Treasurer in favor of the Coroner for ten dollars in full for each inquisition, two dollars and forty cents thereof to be paid to the Jury, and fifty cents to the constable, for their fees.
- Inquisitions may be held on Sunday.**
- Fee for inquisition, how drawn and appropriated.**

5. Medical men examined before a Coroner's Jury shall **CHAP. 19.** be entitled to five dollars each, to be paid by the county, Fee for medical men, &c. 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 Extra charges, how defrayed. 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. Statutes amended. The County or District 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.

7. If any grand jury neglect or refuse to make a pre- If grand jury neglect to present, justices may amerce. sentment for the amount of expense so incurred; the justices in session shall amerce the county for any sum which may appear to them necessary to be raised for that purpose.

8. Any person aggrieved by the assessment may appeal Appeal. as in case of ordinary county rates.

9. In the absence of the Coroner an inquisition may Justice may act instead of coroner. be held before a justice, who shall be entitled in such case to the same fees as a Coroner.

10. Coroners shall return lists in triplicate of the in- Returns to Provincial Secretary. quests 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.

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## CHAPTER 20.

## OF GENERAL AND SPECIAL SESSIONS.

Halifax sessions,  
when held.

Grand Jury to  
attend.

Other counties  
when held.

1. The General Sessions of the Peace for the County of Halifax shall be held on the second Tuesday of March and December, respectively; and the Grand Jury are required to give their attendance thereat.

2. The General Sessions of the Peace in the other counties shall be held as follows:

For Colchester, on the second Tuesday of January.

Cumberland, on the first Tuesday of January.

Pictou, on the first Tuesday of February, and first Tuesday of July.

Hants: West Hants, at Windsor on the first Tuesday of October; East Hants, at the Gore on the second Tuesday of October.

Kings, on the last Tuesday of April, and last Tuesday of October.

Annapolis, on the third Tuesday of April, and last Tuesday of October.

Digby: at Digby, on the first Tuesday of November; Clare, at the sessions house at Clare, on the last Tuesday of April.

Lunenburg, on the second Tuesday of January; and at Chester, on the third Tuesday of January.

Queens, on the second Tuesday of January.

Shelburne: at Shelburne, on the second Tuesday of January, and first Monday of June; at Barrington, on the Monday next after the fourth Tuesday of April.

Yarmouth: at Yarmouth, on the first Tuesday of March, and the first Tuesday of September; and at Argyle, on the third Tuesday of April, and third Tuesday of October.

Antigonish, on the second Tuesday of January, and first Tuesday of July, such July sessions not to last more than eight days.

Guysborough: at Guysborough, on the third Tuesday of January, and first Tuesday of May; at Sherbrooke, St. Mary's, on the first Tuesday of December.

Cape Breton, on the first Tuesday of February, and second Tuesday of July.

Victoria, on the third Tuesday of January, and third Tuesday of September.

Inverness, on the first Tuesday of October.

Richmond, on the second Tuesday of January.

Grand Jury  
when to attend.

3. In counties or districts where two terms are held the Grand Jury shall attend only at the fall or winter term. In all counties or districts where there is a single session for the year the Grand Jury shall attend.

4. The General Sessions may be kept open in the County of Halifax for fourteen days, but in other counties or districts for not more than ten days; and they may be adjourned from time to time during term as occasion may require.

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Duration of sittings and adjournments.

5. Bills of indictment may be preferred, found and tried, and judgment thereon given, in the General Sessions of the Peace for the County of Halifax, as heretofore; and persons convicted thereat may be sentenced to confinement in the county jail in the same manner as if tried and sentenced in the Supreme Court.

Indictments may be found and tried in Halifax sessions.

6. When a question of law shall arise, and the Sessions desire the opinion of the Supreme Court thereon, the Clerk of the Peace may be ordered to prepare a case, to be signed by the Custos or the presiding Justice, which may be filed and entered by either party interested therein, or by the Clerk of the Peace, with the Prothonotary, for argument at the next Sitting of the Supreme Court in the county.

Cases may be prepared for Supreme Court.

7. The presiding Judge may order the case to be sent back to be amended if he shall see fit: he may hear and determine the same; or he may, if he think the matter more fit for the determination of the whole Court, grant a rule nisi, returnable at Halifax, to be argued and disposed of as other rules are. The judgment of the Supreme Court, whether in the country or at Halifax, shall be embodied in a rule and returned to the Court of Sessions by the Prothonotary, and shall be final.

Amendments. Adjudication provided for.

8. The Custos of his own authority may, and upon the written requisition of three Justices, specifying the particular objects thereof shall, call Special Sessions for the transaction of any business which may be legally transacted thereat, and he shall in all cases direct the Clerk of the Peace to convene the same, giving him at the same time the necessary information as to the objects thereof; and the Clerk of the Peace shall forthwith post up advertisements in at least five of the most public places in the township or settlement interested in the business to be transacted at such Sessions; and if there shall be any business affecting the interests of the county or district generally, then advertisements shall be posted in at least three of the most public places of each township of such county or district; and all such advertisements shall be posted up at least five days before the meeting of the Sessions, and shall mention the particular business to be transacted thereat; and a copy of the notice shall be filed by the Clerk of the Peace; and no business shall be transacted at such Sessions other than that contained in the advertisement. In case of a vacancy in the office of Custos, or of

Special sessions: how called; what business transacted.

**CHAP. 21.** the absence from the county or illness of the Custos, any three Justices may direct the Clerk of the Peace to call such Special Sessions.

Number of Justices necessary; records to be made and filed.

9. Every Special Sessions, unless otherwise prescribed, shall be composed of five or more Justices; and the Clerk of the Peace, or, in his absence, a fit person to be named by the Justices present, shall attend and make a record of such Sessions and of all proceedings had thereat, to be filed in the office of the Clerk of the Peace.

## CHAPTER 21.

### OF COUNTY ASSESSMENTS.

**County Treasurer, how appointed.** 1. The Grand Jury shall annually at the General Sessions present the names of three persons being resident in the county, neither of whom shall be the Custos of the county, one of whom shall be appointed by the Court Treasurer for the county, who shall give bond to Her Majesty, with sureties to be approved of by the Custos, in a sum to be named by the Sessions, for the performance of the duties of his office, and shall be sworn into office; and such Treasurer shall continue to hold office until a successor is appointed. The salary of the County Treasurer may be fixed by the Grand Jury and Sessions. In case no provision is made therefor, he shall be allowed one and a-half per cent. on all moneys received by him for railway damages, and five per cent. on other moneys.

Salary.

Treasurers may appoint deputies.

2. The County Treasurer in any county or district may, with the consent of the Custos, appoint, by writing under his hand filed in the office of the Clerk of the Peace, a deputy to act for him in case of sickness or temporary absence, for whose conduct the principal and his sureties shall be responsible; and the deputy so appointed shall have the same powers vested in him for the time being as by law are vested in the principal, and his acts shall be equally valid.

In case of death how vacancy supplied.

3. In case of the death of a County Treasurer a special Sessions shall be convened according to law, wherein a Treasurer shall be appointed for the time being, or until a County Treasurer shall be appointed as provided by the first section; and the temporary Treasurer so appointed at such special Sessions shall give bonds in the manner required by such first section.

4. The Grand Jury on their own knowledge, the recommendation of the Court, or the representation of three or more freeholders of the county, shall present any sums of money necessary in their judgment for any public purpose within the county, the same to be confirmed by the Sessions; and they may include for their own remuneration, while actually attending the Court of Sessions and the Supreme Court, such sum as they may judge necessary, so as the same shall not exceed one dollar per day for each juror actually attending the Court of Sessions, and fifty cents for each juror actually attending the Supreme Court, and ten cents per mile travelling expenses—the distance to be computed from the residence of the juror to the place where the Court is held.

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Presentments for general purposes.

Remuneration.

5. Upon the petition of twenty rate-payers of any township or place certified to be such by a justice of the peace, the Grand Jury may present any sums necessary for the erection or repairs of lock-up houses and the payment of keepers thereof; for the purchase, the 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, long, liquid and dry, for any township or place; and such sums, when confirmed by the Sessions, shall be added to the apportioned assessment upon such township or place, and assessed and levied exclusively thereon. The Sessions may make regulations for the use and management of such buildings and public property, and may appoint keepers thereof. The Sessions may make an order for distributing over any period not exceeding four years, any amount presented for assessment under this section or any sum presented for building or repairing a court-house or jail for the county or district, and may appoint Commissioners for expending the same, and may authorize such Commissioners to borrow such amount on the most favorable terms; and any money borrowed under this Chapter shall be a county or district charge and bear interest till paid.

Presentment for local and special purposes.

Power to distribute.

6. If any Grand Jury neglect or refuse to make a presentment when necessary for any of the following purposes, that is to say;—for the building or repairing a jail or the appurtenances thereof, a court-house or sessions house, and for fuel for the use of the same; for the erecting and repairing pounds, and providing bolts, bars and shackles, and also for conveying persons accused of crimes to jail, when the distance shall be three miles or upwards, at a rate not over ten cents per mile; for the decent support of poor criminals or poor debtors in jail; for the salary to the Treasurer of the county; for a salary to the Clerk of the Peace of not less than eighty dollars; for the main-

Amercements for certain purposes—when Grand Jury may neglect.

**CHAP. 21.** tenance 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 place of confinement; for defraying the expenses of persons sentenced to confinement and labor within the county, and procuring materials for such labor; for paying extraordinary expenses ordered by the Sessions to constables, and incurred in execution of their duty in cases of riot or felony; for paying allowances to special constables ordered by the Sessions, 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 county; for expenses incurred about removing county rates by certiorari or otherwise, or in prosecuting or defending any action or proceeding at law respecting such county affairs;—the justices in session shall amerce the county for any sum which may appear to them necessary to be raised for that purpose.

Assessors and collectors, how appointed.

7. When any presentment shall be made, the Grand Jury shall furnish to the Court the names of such number of persons of the county as the Court shall direct to be assessors and collectors respectively for the several townships and places in such county; and the Court shall appoint not less than half the persons named; and collectors shall be required to give security to the amount of the rate bills placed in their hands for collection.

Appointment in cases of amercement.

8. In case of amercement, where no assessors or collectors shall have been appointed, the Sessions shall appoint the necessary number, being persons resident within the county.

Assessors to be notified.

9. The Clerk of the Peace for the county shall in all cases notify the assessors and collectors of their appointment, and they shall be sworn into office. The oath to be taken by assessors shall be in the form of Schedule G.

Return of time and compensation.

10. Assessors shall return with the assessment roll a statement of the time spent by them in such duties; and such compensation for their services, not to exceed one dollar and fifty cents per day for each assessor, as shall be presented by the Grand Jury and confirmed by the Court of Sessions, shall be a county charge and be added to the amount to be assessed upon the county.

Vacancy, how supplied.

11. In case any assessor when appointed as authorized by law neglects or refuses to act, his place may be supplied by another, to be appointed by the Custos on the requisition of two magistrates, as soon as practicable after such neglect or refusal shall become known to the Custos or Clerk of the Peace.



12. If in consequence of the neglect or refusal to act **CHAP. 21.**  
of any assessor the assessment shall not be proceeded with When vacancy supplied—assessment, when proceeded with.  
within the period prescribed in this Chapter, the same shall be proceeded with within one month after the appointment made under the preceding section shall be notified to the party appointed.

13. Any assessor neglecting or refusing to be sworn Penalty for refusal to act.  
into office, or to perform any of the duties belonging to his office, shall forfeit eighty dollars, to be recovered in the same manner as a private debt before any two justices of the peace, and sued for by the Clerk of the Peace; and the amount when recovered shall be added to the funds of the county.

14. For all purposes for which local and direct taxes What real and personal estate liable to taxation.  
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.

15. 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. Definition of terms.

16. The following property shall be exempted from Exemptions.  
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, lockup 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, when of less value than four hundred dollars; fifthly, funds invested in provincial debentures.

17. One-fourth and no more of all local and direct taxes Poll tax, proportions, and upon whom.  
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

**CHAP. 21.** 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 Sessions in any county may order the whole amount to be levied and assessed solely upon real and personal estate.

*Proviso.*

*Assessment roll  
—rules for.*

18. In making up the assessment roll the assessors shall be governed by the following rules :

*Districts.*

I. The assessors in making up the assessment roll shall follow the divisions of electoral districts, and shall arrange separately in alphabetical order the names of the rateable inhabitants of each electoral district.

*To include all  
assessable prop-  
erty of resi-  
dents.*

II. Where the owner or occupier is resident within the county the assessors for the district within which he resides shall include in the roll the whole of his assessable property.

*When in differ-  
ent districts.*

III. If such property be situate in different districts of the county, it shall be so discriminated in the assessment roll as to shew for what amount he is assessable in each district.

*Non-residents.*

IV. Where the owner or occupier is not resident within the county 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.

*Tenants.*

V. Where the owner of lands which are occupied by another party as tenant for any period less than one year resides within the county, 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 county they shall be estimated as the property of the occupier.

*Persons unable  
to pay to be  
omitted.*

VI. In making up the assessment roll the assessor 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.

*Time in which  
assessment roll  
to be made.*

19. Between the first day of November and the first day of December in each year, the assessors appointed by the Grand Jury and Court of Sessions for each township or district 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 provision

of this Chapter, and containing the particulars mentioned CHAP. 21.  
 in Schedule B, for each of the items of which the assess-  
 ment roll shall contain a separate column.

20. The lands of non-residents shall be designated in Lands of non-residents.  
 the assessment roll, but in a separate part of it under the  
 head of "assessment roll of non-residents' lands," which shall  
 contain the several particulars specified in that part of  
 Schedule B which refers to such lands.

21. All real and personal property liable to taxation Property, how valued.  
 shall be estimated by the assessors at its actual cash value.

22. The assessors shall complete the roll on or before Completion of roll.  
 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:

"We do severally certify that we have set out in the Certificate.  
 above assessment roll all the real and personal property  
 within the county 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 county liable to taxation within our  
 district, and the actual value thereof in each case, accord-  
 ing to our best information and judgment. (*In counties  
 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."

23. The roll thus certified shall be forthwith forwarded Roll when forwarded to clerk of peace and posted.  
 to the Clerk of the Peace for the county; 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 con-  
 cerned.

24. From such roll the county rates and poor rates County rates.  
 shall be made as follows:

I. Any party residing within the county shall be taxed Residents.  
 for his county rate in one sum, which shall be collected by  
 the collector of the district where he resides.

II. Such party shall be taxed for his poor rate in each Poor rates.  
 district where his taxable property lies, and the same shall  
 be collected by the several collectors of the poor rates in  
 the several districts.

III. Where the party taxable is a non-resident or un- Non-residents.  
 known, his property shall be taxable for both poor and  
 county rates in the district where such property lies.

25. The Clerk of the Peace shall, on or before the first Clerk of peace to make out county rates.  
 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.

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Assessors to furnish clerk of poor district copy of roll.

26. 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 Peace for the county ; 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 collectors roll, making allowance for necessary differences, and place the same in the hands of the collectors.

Assessment roll.

27. 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.

To be delivered to collectors by clerk of peace.

28. The Clerk of the Peace shall deliver the roll so made by him to the collectors appointed by the Court of Sessions and Jury for each township or district.

Collectors' rolls of poor rates.

29. 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.

Collectors when chosen.

30. At any meeting held by law to provide for the support of the poor, under the Chapter of the Revised Statutes on that subject, the inhabitants shall choose as many collectors as they may deem necessary to collect the poor rates for the district or township within which such meeting shall be holden, and shall also choose a clerk, to be called the clerk of such poor district, who shall act as clerk to the overseers of the poor for the district ; and such inhabitants shall award to their clerk a reasonable remuneration, to be fixed at such meeting and added to the amount to be assessed on the district.

Remuneration.

Duty of collectors.

31. The Sessions 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 County 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.

Non-resident owners.

32. 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.

Unpaid taxes—warrants, when issued.

33. 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. CHAP. 21.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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.

39. 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 constable's sales, under executions issued from justices), the surplus shall be paid over to the County 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.

**CHAP. 21.** 40. 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 County Treasurer, within ten days after the day named in his advertisement for the sale thereunder.

Warrant to be returned, when, &c.

Assessment roll, how returned.

41. Every collector shall, at the expiration of the time limited by his roll, return to the County 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 cases where sales under warrant shall have taken place; and shall also return the certificate given to him as aforesaid.

Records, &c., kept by county treasurer.

42. The County 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.

Warrants, by whom awarded, and when.

43. It shall be the duty of the County Treasurer to lay every year before the Court of Sessions for each county, the book containing such entries; and such court 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.

Sale, when ordered by court.

44. When the Court shall have ordered a sale, the Clerk of the Peace 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.

Sheriff's sale, how much sold.

45. 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 County 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 *primâ facie* evidence of the title of the lands being conveyed to the grantee. CHAP. 21.

46. The County 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 county fund and be paid to the order of such person or persons as shall prove to the satisfaction of the Court of Sessions, his or their right to the same as owners of the lands in respect of which the sale occurred. Surplus, how disposed of.

47. The County 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. Poor rates on lands of non-residents paid over.

48. 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. Collector to pay over to treasurer.

49. 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 justices' 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 County Treasurer. The justice's fees for such warrant shall be seventy cents, and the collector's or constable's fee for each person in the warrant Return of defaulters.

General or special warrant may issue.

Fees.

**CHAP. 21.** 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 included in one warrant ; and the form of the warrant in the Schedule of Chapter 33, " Of the Settlement and Support of the Poor," or that in Schedule F of this Chapter, so altered as to answer the purpose of collecting both rates, shall be used.

Constable's or collector's duty on warrant.

50. The collector or constable shall forthwith execute such warrant, and pay over the amount collected thereunder to the County 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 general warrant as may be necessary to include costs and fees thereon, directing the collector or constable 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.

Separate warrant to take body.

Warrant when executed by sheriff.

51. 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.

Commission to collectors.

52. The rate of commission to collectors shall be fixed by the Sessions at a rate not exceeding five per cent. on the amount collected, where the collector does not collect the whole amount of his roll ; but the Sessions may increase such commission to seven and one-half per cent. where the collector shall pay over to the County Treasurer the whole amount of his roll.

Collector's neglect of duty.

Fine.

53. Every person appointed a collector who shall neglect to be sworn into office, or who shall not perform the duties thereof, shall forfeit eight dollars, recoverable in the name of the County Treasurer as other debts of the like amount ; which sum, when collected, shall be paid into the county fund.

Amercements by supreme court on neglect of sessions.

54. If the Sessions shall neglect to make presentment as herein directed, the Supreme Court shall amerce the county in such sum as shall appear to them upon affidavit of a rate-payer to be necessary for the purposes of the



sixth section, which sum shall be assessed upon the inhabitants of the county, collected, paid to the Treasurer and accounted for as other rates. CHAP. 21.

55. Where the Supreme Court have power by any act to amerce a county, 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 Peace, shall render it the duty of the Clerk and of every other county, district and township 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 presented by the Grand Jury and Sessions in the usual course. Proceedings in supreme court.  
Clerk of the peace to proceed as if presented.

56. Any county, district, or township officer neglecting or refusing to perform any duty devolving upon him under this Chapter, in respect of such amercement, may be proceeded against 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. Neglect of duty.  
Fine.

57. The Supreme Court, in case of the neglect or refusal of any such Clerk or other county district or township 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. Supreme court may name person when clerk of peace refuses.

58. In any case in which a collector of poor and county 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 distrainment, 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 distrainment. Special warrant, how obtained.

59. All moneys belonging to or due the county shall be paid to the Treasurer thereof; and all moneys due from the county shall be paid by him on the order of the Sessions. Moneys paid to treasurer.

60. The Treasurer shall, once in every year, at such time as may be directed by the Sessions, make up his account, and send the same to the Clerk of the Peace to be filed; and the same shall be laid before the Justices and Grand Jury on the first day of the next Sessions to be Treasurer's account to be prepared annually and audited.

**CHAP. 21.** audited; but the Justices, either in General or Special Sessions, may at any time before the Sessions, if they see fit, order the County Treasurer to make out and render his account up to any period named in such order.

Appeals, when and how presented.

61. Any person aggrieved by the assessment or the levy may appeal to the next Sessions held in the county or to any Special Sessions to be held for hearing appeals, giving at least eight days' notice to the Clerk of the Peace 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.

Repayment when ordered.

62. If any money has been paid by the appellant, and the Sessions adjudge that the same or any part thereof be returned, the same shall by order of the Sessions be repaid by the Treasurer out of any money received from the general assessment of the county; but no appeal shall delay the collection or recovery of the sum assessed upon the appellant.

Appeal not to delay collection.

Overseers of works to render accounts.

63. Every person appointed by any presentment and order thereon or by any amercement, to be an overseer of work or distributor of money so raised, shall at the next Sessions, and within a reasonable time by the Sessions 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 Sessions shall appoint; and in default of such account or payment he shall by warrant of the Sessions 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.

Proceedings on default.

Compensation to overseers, &c.

64. The sessions, 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.

Forfeitures and penalties, how collected, &c.

65. Forfeitures and penalties hereby imposed, the collection of which is not otherwise provided for, shall be sued for by the Clerk of the Peace by direction of two justices, and collected as other debts of like amount with costs; but no suit shall be brought before a justice who shall have directed the same; and forfeitures and penalties when recovered shall be paid to the Treasurer for county purposes.

66. 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. **CHAP. 21.**  
Limitation of actions and venue.
67. No certiorari to remove rates or orders, or other proceedings of the Sessions 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.
68. 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 sessions. When rates quashed, over payments refunded, &c.
69. The word "county" in this Chapter shall include a district wherever a county has been or hereafter may be divided into sessional districts. Definition of terms.
70. Where the words "Court of Sessions" and "Grand Jury," or other words to that effect, are used in this Chapter, the same shall, in counties or districts incorporated, be construed to mean the municipal council of any such county or district. Definition of terms.
71. The City of Halifax 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, how far exempt.
72. If the whole assessment to be contributed in any one year by a district be not collected and paid over to the County 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.
73. All travelling and other expenses incurred by justices in the discharge of their appointed duties under this Chapter, shall be paid by the county, subject to the approval of the Grand Jury and Sessions. Expenses, how provided.
74. The Clerk of the Peace 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 Clerk to enforce penalties.  
Penalty for neglect.

**CHAP. 21.** so within ten days after he shall have been required by the Custos or the Court of Sessions, he shall pay a fine of eighty dollars, to be recovered in the Supreme Court in the name of the Queen; and in case the Clerk of the Peace 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.

Appointment of local and general assessors.

75. It shall be lawful for the General Sessions of any county, on presentment from the Grand Jury recommending the same, instead of appointing assessors for separate townships and places, to appoint, in the same manner as other county officers are appointed, one or two assessors for each electoral district within the county, who shall be called local assessors; and also to appoint for the whole county general assessors, not to exceed three in number; and thereafter the assessment roll for each electoral district in any such county shall be made up by the general and local assessors of the district, acting as a board of assessment for such district.

Meeting, notice of.

76. In such case the Clerk of the Peace shall 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 electoral 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.

Returns to Provincial Secretary's office.

77. Every Clerk of the Peace in the Province shall, not later than thirty days after the adjournment of the Court of General Sessions, 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.

Estate of deceased person liable for rates.

78. The estate of a deceased person in the hands of his 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.

79. It shall be the duty of assessors to assess all the rateable 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 specify distinctly their valuation of the portion in each, also of the portion, if any, not included in any school section.

CHAP. 21.  
Duty of assessors.

80. If at any time the assessors neglect to carry out the provisions of the next preceding section the Clerk of the Peace 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 Peace 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.

Assessors neglecting.

81. Hereafter ships or vessels on the stocks in course of construction and the timber and materials in any ship yard used or to be used in their construction shall be exempt from county rates to the extent of half their value.

Exemptions.

82. 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 Peace of such county or district, who shall file the same.

Assessors collectors, and town officers shall be sworn into office by J. P.

83. 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 Peace as in the next preceding section directed, he shall forfeit twenty dollars.

J. P. refusing to swear any officer to forfeit \$20.00.

84. Persons residing in one district and owning property in another district of a county may be assessed for the same in the district where the property is situate; and notice of such assessment transmitted by post shall be deemed a sufficient notice.

Property assessable in district, where situate.

Notice.

85. 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, Custos, or Clerk of the Peace 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.

Correction of error in name on assessment roll.

**CHAP. 21.**

Warrant of distress, on what levied.

Property transferred or taken under execution first liable for assessment.

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 statements under oath of actual value.

Resident agent defined.

Such sworn statement adopted by assessors.

Appeal.

If no such statement original valuation adopted.

Vacancies in assessors, how filled.

86. 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.

87. In case of any transfer of property the assessment shall be payable by the assignee or occupier; and, in case of property taken under execution, or any other process of law, the same shall be first liable for any assessment which may be due and payable thereon, and payment thereof enforced; and the Sheriff or other officer shall be bound first to pay such assessment out of the proceeds of sale.

88. The assessment of all coal mining and other joint stock companies shall be made as follows:—Before the assessment for the whole county 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 county 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.

89. 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 assessors shall adopt the valuation sworn to; and such valuation shall be binding, subject only to an appeal by the Clerk of the Peace on behalf of the county to the General Sessions of the Peace or to any Special Sessions called for the purpose of hearing appeals and therefrom if necessary to the Supreme Court.

90. 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 Court of General Sessions of the county.

91. Whenever the General Sessions of the Peace shall neglect or omit to appoint assessors or collectors under section seven of this Chapter, or if the persons appointed

shall die, leave the Province, or refuse to act, then it shall CHAP. 21. be lawful for a Special Sessions, called and summoned in the usual way, to fill such vacancies; and the assessors or collectors so appointed shall have the same powers, duties and liabilities as if appointed by the Grand Jury and General Sessions.

### SCHEDULE 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 County.	Value of personal Estate within the County.	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 [ <i>or District</i> ], per list.					

Assessment roll of non-residents' lands within the Township [*or District*] of \_\_\_\_\_.

Name of taxable party if known.	Number of acres or thereabouts.	Description of lot sufficient to identify it.	Value of land.
J. B.	500	A lot of land situate to the West of _____ river, bounding thereon on the East [ <i>or such other description as may identify it</i> ]	\$800
Unknown.	300	A lot of land originally granted to A. B., [ <i>or such other description as may identify it.</i> ]	5200

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## C.

Collector's Roll for County 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 County 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.)	\$900 00	40 cents
Unknown.	301	(Copy as above.)	5200 00	\$2 60

You are hereby required to collect three dollars, the tax as specified in the within roll, and to pay over the same to the County Treasurer within \_\_\_\_\_ days herefrom.

Dated at \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, A.D. 18—.

A. B., Clerk of the Peace.

To C. D., Collector of County 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 Twenty-One of the Revised Statutes, "Of County Assessments";



And whereas, upon such sale the said C. D. paid the purchase money : CHAP. 21.

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.*

County 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 county 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 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 County, 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—.

CHAP. 22.

## G.

*Assessor's oath.* I, A. B., do swear that I will well and faithfully perform the duties of my office as Assessor for the district of ———, in the County of ———, under the laws of this Province, to the best of my ability. So help me God.

## CHAPTER 22.

## OF JAILS AND OTHER COUNTY BUILDINGS.

- Jails, court houses and session houses, how erected and repaired.*  
*Spirituons liquors forbidden within jail limits.*
1. County or district jails, court houses and session houses, may be erected and repaired by order of the grand juries and sessions in the respective counties and districts.
- Penalties for a second conviction.*
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 spirituous 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.
- Prosecution to be by clerk of license.*
3. Every jailer, on a second conviction therefor, shall, in addition to paying a second fine, be disqualified for office and be forthwith dismissed.
- Liquors when prescribed medically may be furnished.*
4. Prosecutions shall be in the name of the clerk of the licenses for the county or district; and on information given him it shall be imperative upon him to sue for such fine.
- Exceptions where houses within the limits.*
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.
- Jail limits and yards, as well as the conduct of sheriffs and officers, to be regulated by supreme court.*
7. The Supreme Court in the different counties shall from time to time make and publish rules and orders for fixing and ascertaining the limits and boundaries of jail yards, and for directing and controlling the conduct of sheriffs, jailers and officers having the charge or custody of prisoners, and for their safe keeping and protection.

8. The justices in sessions may make orders for the regulation of county buildings and for the internal regulation of county or district 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.

CHAP. 23.

Orders touching county buildings, jails, jailers and prisoners, made by sessions in certain cases.

9. The justices in session, with the assent of the grand jury, may regulate the salary of jailers and subordinate prison officers, and may regulate or abolish the payment by prisoners of fees.

Sessions may regulate salaries and fees.

10. Certified copies of all such orders shall forthwith thereafter be furnished by the Clerk of the Peace 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 Peace 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 before and after conviction.

13. The sessions in any county or district, on the recommendation of the Grand Jury, shall appoint keepers of such Lock-up Houses who shall be responsible for the safe custody of prisoners.

Sessions to appoint keepers of lock-ups.

## CHAPTER 23.

### OF TOWNSHIPS, CERTAIN COUNTY AND TOWNSHIP OFFICERS.

1. The boundary lines of townships, wherever the same have been established, are confirmed.

Boundaries of townships confirmed.

2. The Grand Jury for each county, when required by the Court of General Sessions, shall nominate out of the respective townships within the county, or any of them, six persons, of whom the justices shall appoint three to be surveyors of lines and bounds of such townships, who shall survey, examine and ascertain the lines and bounds of such townships in such manner as the Sessions shall direct; and the lines of townships so surveyed when confirmed by the Sessions shall be binding.

Surveyors of township lines appointed; their duties.

**CHAP. 23.**

Town officers,  
how nominated  
and appointed.

3. The grand juries in the several Sessions of the Peace shall annually nominate such number of persons for town officers as the justices shall direct, of whom the justices shall appoint such number as may be deemed expedient.

Surveyors of  
highways, how  
appointed in  
cases of omission  
of sessions.

4. If the Grand Jury and Sessions shall not appoint a surveyor of highways or other usual county or township officer for any particular district, any two justices of the peace of the township or settlement may make such appointment.

Officers to be  
sworn in; fines  
for certain  
offences.

5. The officers so appointed shall be respectively sworn to the faithful discharge of their duty before entering thereon, 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 list of such officers so sworn as aforesaid to the Clerk of the Peace of such county or district, who shall file the same. Upon refusal to accept office or neglect to be sworn in within fourteen days, or misbehaviour therein, every such officer for each offence shall forfeit eight dollars; and 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 such list to the Clerk of the Peace as in this section directed, he shall forfeit twenty dollars.

Vacancies, how  
filled.

6. If any person so appointed shall die or leave the township during his term of office, or shall not perform the duties thereof, any three justices may nominate and return a list of three persons to the Custos of the county or district, one of whom shall be selected by the Custos to fill such vacancy. The Custos shall return such list with his selection to the Clerk of the Peace, who shall immediately notify the person selected of his appointment, and the person so appointed shall be subject to the same duties and liabilities as in ordinary cases.

Custody of town  
plans, grants,  
&c., provided;  
fee for inspec-  
tion.

7. All plans, grants, title deeds and conveyances, belonging to any township, or in which the proprietors have a common interest, shall be kept in the custody of the clerk of such township, who may recover possession thereof in an action in his own name; and such documents shall be open for inspection to any person on payment of a fee of ten cents.

Constables, how  
appointed.

8. The Sessions for the County of Halifax are authorized upon the recommendation of the Grand Jury, to appoint constables to attend upon the Sessions and the Supreme Court within the county, in the same manner as other town officers are appointed.

Special con-  
stables, when to  
be appointed,  
and how.

9. In case of riot, tumult, or disturbance, or illegal acts of any kind, accompanied with force or violence, or o

a just apprehension thereof, if in the City of Halifax, the Mayor and any three of the aldermen, and if elsewhere in the Province, 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. CHAP. 23.

10. Such special constables shall, within the City, be under the direction of the Mayor or alderman acting as Mayor; and if elsewhere, under the direction of the senior magistrate who has signed their appointment. By whom directed and controlled.

11. In the City, the Mayor or any alderman, and elsewhere any justice of the peace, may swear in such special constables to the faithful discharge of their duty. By whom to be sworn.

12. 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 Mayor, aldermen, or justices by whom they were appointed. Duration of appointment.

13. In case of disorder or disturbance which may occur at any public meeting or assemblage of persons, the Mayor or any alderman if in the City, or any justice of the peace if elsewhere, upon the request of the chairman of such meeting, or of three or more freeholders, may verbally appoint and swear in special constables, who shall aid in restoring and preserving order and peace at such meeting or assemblage. Disorder, or disturbance or apprehension of, at public meetings.

14. 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. Constables, refusing to serve.

15. The Grand Jury and Sessions 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. Appointment and pay of police constables.

16. The funds necessary for such purpose shall be raised by assessment upon the districts wherein such officers are appointed, in the same manner as poor and county rates. Funds, how raised.

17. Any person who shall by force resist any constable or special constable in the execution of his duty, shall be subject to a penalty of not less than two dollars and not more than twenty dollars, to be recovered, if in the City, on conviction in the police court, and if elsewhere, before any two justices of the peace; and, on non-payment, the offender shall be committed to the jail of the county for a period not exceeding thirty days. Protection of.

**CHAP. 23.**

Justices in session in any county may appoint a chief constable.

Such constable to give bonds before entering upon his duties.

Powers and duties of chief constable.

All constables of the county to assist chief constable when required.

Chief constable may appoint deputies.

Additional fees for issuing summons in counties appointing such chief constable.

Nothing herein contained to prevent other constables from performing their usual duties.

18. The justices in session in any county may annually appoint a Chief Constable for such county, and fix a salary of not less than one hundred dollars a year, to be paid to him out the County Treasury.

19. 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.

20. 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 county, poor and school 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.

21. All constables of the county, 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 be liable to a fine of not more than twenty dollars, to be recovered as an ordinary debt before any two justices of the peace for the County in the name of the Chief Constable.

22. 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.

23. In every county 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 County 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 County Treasurer the sums to him so paid.

24. 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 CHAP. 23.  
Chapter he could lawfully serve, execute or do.

25. The Chief Constable shall be entitled to the same Fees.  
fees on service and execution of process as an ordinary  
constable.

26. No justice of the peace shall be appointed a Chief No J. P. chief  
Constable. constable.

27. The Clerk of the Peace shall cause lists of all Lists of officers  
officers appointed at the Sessions for the several townships posted.  
or districts to be posted in at least three of the most public  
places therein within one week from the close of such  
Sessions.

28. All such officers, except overseers of the poor, Officers when to  
shall enter upon their duties on the twentieth day from enter on duties.  
the first day of the sessions; and the old officers shall  
serve up to that time. Overseers of the poor shall take  
office at the time now by law provided for the holding of  
the first town meeting after their appointment; and their  
predecessors shall discharge their duties of office until  
then.

29. Surveyors of highways shall be indemnified by the Surveyors in-  
county in cases where they may bring actions under the demnified.  
written authority of two justices of the peace against  
persons neglecting or refusing to perform their statute  
labor.

30. All town officers shall be eligible for re-appoint- Officers eligible  
ment annually and may serve in one or more offices. for re-appoint-

31. Surveyors of highways shall make their returns to Surveyors of  
the Clerk of the Peace at least twenty days before the highways to  
meeting of the Sessions, under penalty of two dollars for make returns.  
each default.

32. The justices in session may fix the rate of the Justices to fix  
County Treasurer's salary, not to exceed five per cent. on salary of county  
the amount of moneys received by him, unless the Grand treasurer.  
Jury grant an additional sum.

33. In cases where the duties of town officers are not Where duties not  
now defined by law, the justices in session shall have power defined, justices  
to determine the same. may determine.

34. Persons required to be sworn into office under this Form of oath.  
Chapter shall take and subscribe the following oath or one  
to the like effect: "I, A. B., appointed to be —, do swear  
that I will well and faithfully perform the duties of the  
office to the best of my skill and ability"; which oath  
shall be filed with the justice administering the same.

35. For the purposes of this Chapter the words Definition of  
"township" and "settlement" shall extend to and include terms.  
counties or districts, if the context shall require such  
construction.

## CHAP. 24.

## CHAPTER 24.

## OF FENCES, FENCE VIEWERS, AND IMPOUNDING OF CATTLE.

Fences, how constructed.

1. All fences of enclosed lands shall be built of stones, 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.

Height of fences.

2. Such fences shall be at least four feet and a half high, except stone walls and picket and board fences, which shall be at least four feet high.

Damages by cattle, from whom recovered.

3. If any damage be done by horses, sheep, goats, 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.

Of the appraisal.

4. The damages shall be ascertained by an appraisal of three persons living in the neighbourhood, being 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. CHAP. 24.

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 Peace of the county, in memorial and as evidence of the matters therein stated. Sufficiency of fences—how determined.

10. Any person feeling aggrieved by the decision of the justices may appeal to the next General Court of Sessions for the county, whose decision, affirming or reversing the decision of such justices, shall be final. Appeal.

11. Nothing in the three preceding sections shall be construed to affect the title to the lands on which the fences are erected. Titles to lands not affected by this Chapter.

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. Unimproved land, owner not liable to fence.

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 case.

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 overseers of the poor for the place where the trespass was committed. His fees and the mode of recovery.

## CHAP. 24.

Fines for rescue and pound breach; how recovered and appropriated.

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 forfeit twenty dollars to any person who will sue for the same; which penalty and damages or penalty, as the case may be, shall be sued for and recovered with costs, as if the same were a private debt, and the penalties for such pound breach, after deducting any expenses of repairing such breach of the pound, shall be paid to the overseers of the poor for the place where the offence shall have been committed.

Rivers, creeks, &c., when deemed lawful fences.

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.

Appeals from judgment of fence viewers.

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 Court of Sessions; instead, such person may apply to the Sessions, who 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 were lawful.

19. In every case where damage shall be done to the enclosed lands of any person by any of the animals herein before 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 sides of public grounds, bridges, &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.

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.

## TITLE V.

## OF THE SUPPORT OF PUBLIC WORSHIP.

## CHAPTER 25.

## OF THE CHURCH OF ENGLAND.

1. No minister of the Church of England shall officiate as a clergyman of that Church but such as shall be duly licensed by the Bishop, and shall conform to the orders and constitution of the Church of England; whereupon he shall be inducted into any parish which may make presentation of him.

Licensed clergy men only to officiate.

2. No license shall be refused without the causes of refusal being signified in writing and delivered to the applicant.

Licenses not refused without cause shown.

3. 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, and may divide and sub-divide any parish now established or hereafter to be allotted; but no parish shall be divided or subdivided by the Bishop unless on the application of a majority of the parishioners of the parish proposed to be divided or subdivided, or by a majority of parishioners expressed at any public meeting of the parish called for the consideration of such a measure.

Parishes established; mode of allotting, dividing and establishing future parishes.

4. The church wardens and parishioners of every parish shall meet annually on the Monday next after Easter-day, notice of the hour and place of meeting having been first given by the rector or officiating minister; at which meeting the parishioners shall choose two church wardens and twelve vestry men, to whom the clergyman officiating as rector in the parish shall be added; and such church wardens and vestry, 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.

Of the election of churchwardens and vestry, and their power.

5. Churchwardens and vestries are hereby constituted within their respective parishes bodies corporate, 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 there-

To be bodies corporate for purposes specified.

**CHAP. 25.** of 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 bye-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.

**Of parishioners : their power of granting money ; mode of assessment and collection.** 6. The parishioners shall consist of pew holders and others accustomed to attend upon the services of the church ; and such parishioners who have previously paid up their pew rents and assessments, or the accustomed contributions to the church, may, if they think fit, at their annual meeting by a majority of those present, grant money for the support of their ministers, and all other expenses which shall be required for the payment of such officers as may be found necessary, and for repairs and other services ; which shall be assessed by the churchwardens and vestry in just proportions upon such parishioners, being persons usually attending the services and ordinances of the church, according to their respective abilities, and shall be collected in the name of the clerk of the vestry for the use of the parish as an ordinary debt ; but no act of the churchwardens and vestry shall be valid unless it be agreed upon by seven of their members ; nor shall the assessment be valid unless it be subscribed by that number at least ; and the parishioners at their annual meeting shall appoint three of their number, by whom the churchwardens and vestry shall be assessed.

**Power of churchwardens and vestry over assessments.** 7. The churchwardens and vestry shall have power to abate any individual assessment if it should appear unequal, and to compromise the same for prompt payment or otherwise, as it may be for the interest of the church, without affecting the general rate.

**Meeting for business, when and how called.** 8. The churchwardens and vestry may meet for the transaction of business as often as occasion may require ; and the churchwardens, vestry and parishioners, may assemble for all business connected with the parish, except the choice of officers or making assessments, as often as it may be considered necessary, either upon the application of the rector, the churchwardens, 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 by the minister of the parish during divine service in the church on some Sunday at least three days previously.

**Churchwardens &c., refusing to act, others to be appointed.** 9. In case of refusal to act by persons nominated as churchwardens and vestry, the parishioners shall proceed to nominate others in their place until a sufficient number shall accept office.

10. No conveyance by lease or otherwise of any parsonage or glebe held by a minister of the Church of England shall be valid for a longer period than his own incumbency, unless with the concurrence of the churchwardens 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 churchwardens and vestry, absolute sale may be made of any glebe lands or other real estate belonging to the parish, if the same be thought for the interests of the church.

CHAP. 26.  
Glebe lands, how sold or leased.

11. 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 twenty-sixth year of his late Majesty King George the Third, Chapter eighty-four, to the contrary notwithstanding.

Licenses grantable to certain foreign clergymen.

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## CHAPTER 26.

### 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 rites 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 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.

Congregations formed by deed, trustees named, other particulars provided.

## CHAP. 26.

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; bye-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.

CHAP. 26.

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 ex-  
ecuted; 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 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.

Real estate how  
sold or disposed  
of.

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

Sale of building  
used for public  
worship, &c.

- CHAP. 26.** meeting, appoint a committee of three of their number to make sale of such building; and the committee shall see 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.
- Funds how 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 rateable 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.
- Society may alter constitution.** 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.



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.

CHAP. 26.

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 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.

Constitution, how altered.

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 other-

Proceedings for sale of church, &c.

**CHAP. 26.** wise 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 corporation 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.

Not to affect church of England.

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.

## CHAPTER 27.

## 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 rent, and shall have power to hold or occupy such pews, and to eject any person illegally in possession thereof.

Possession, how given; rent recoverable; mode of removal.

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.

Further assessment.

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.

Chapter not to affect Episcopals or Wesleyans.

CHAP. 28.

## TITLE VI.

## OF THE PUBLIC HEALTH.

## CHAPTER 28

## OF PRACTITIONERS IN MEDICINE AND SURGERY.

**Provincial medical board, how constituted.** 1. The Provincial Medical Board shall continue to consist of nine regularly qualified medical practitioners, of not less than seven years standing, five nominated and appointed by the Governor in Council and four 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.

**Filling of vacancies in board.** 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 nine members, five appointed by the Governor in Council, and four 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. **Provido.** 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 for the first nine members of the Board.

**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.

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.

CHAP 28.

Secretary to be also registrar.  
Salary of Secretary and registrar.

5. The Registrar of the Board shall, before the first day of May 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 first day of January 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.

Publication of medical register—Copies of such register shall be received as evidence in all courts that persons therein named are duly registered, &c.

Proviso.

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.

Preliminary examination.

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 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 five dollars to the Registrar.

Qualification for matriculation examination.

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.

Practitioner's name must be entered on registry book, and license procured.

## CHAP. 28.

Qualification for person before he can register his name and procure license to practise.

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 ten 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.

Proviso.

Last preceding section not to apply in certain cases.

10. The last preceding section shall not apply to any person in actual practice, and duly registered under the provisions of Chapter 56 of the Revised Statutes, Third 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 **CHAP. 28.** 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 ten dollars; shall be entitled to be registered and to receive a license to practise.

11. Notwithstanding anything to the contrary herein contained, any person who shall have regularly begun his medical studies in this Province before the first day of May, 1872, shall be entitled to be registered and receive a license to practise, upon paying a fee of five dollars and complying strictly with the provisions of Chapter 56 of the Revised Statutes, Third Series, "Of Regulations concerning the Practice of Physic and Surgery:" Provided, that such person shall apply for such license and registration before the first day of July, A. D. 1876, after which date this Section shall cease and determine.

Mode of procuring license by persons having commenced studies before May, 1872.

Proviso.

12. The Provincial Medical Board shall have power and it shall be their duty:—

Powers and duties of Provincial Medical Board.

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 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 bye-laws for regulating the registers to be kept under this Chapter:

7°. To make all such rules, regulations, and bye-laws for carrying this Chapter into effect as to the Board shall seem proper or necessary; which rules, regulations and

**CHAP. 28.** bye-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.

Rules to remain in force.

13. The rules and regulations (if any) as to the times 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 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.

Meetings.

Moneys.

14. All moneys forming part of the funds of the Board shall be paid to the Treasurer, and shall be applied to carrying this Chapter into execution.

Duty of the Registrar.

15. It shall be the duty of the Registrar to keep his 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 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 practice 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. CHAP. 28.  
 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.

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.

Qualification, when entered with name.

Fraudulent entry may be erased.

19. Any registered 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 by the direction of the Provincial Medical Board his name shall be erased from the register.

Practitioner convicted of felony, &c.

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.

Persons obtaining higher degree than that registered.

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 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.

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 which he shall have both prescribed and supplied, unless he shall prove upon the trial that he is registered under this Chapter.

Persons not registered cannot recover charges.

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

Interpretation of certain terms.

**CHAP. 28.** used in any Act of the Legislature, or legal or public document, shall be construed to mean a person registered under this Chapter.

No one to be appointed public medical officer unless registered.

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.

Certificate not valid unless person signing is 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.

Penalty for persons practising who are not registered.

26. If any person not registered or licensed under the provisions of this Chapter, or not being actually employed as a physician or surgeon in Her Majesty's naval or military service, practises Physic, Surgery, or Midwifery for hire, gain or hope of reward, he shall thereby forfeit a sum of twenty dollars for each day on which he so practises.

Sum forfeited under preceding section may be sued for in same manner as private debt.

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 member thereof; 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.

Proviso.

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. **CHAP. 28.**

32. No suit shall be commenced under this Chapter after one year from the date of the offence or cause of action. No suit after one year.

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. Females may practise midwifery. Proviso as to city of Halifax.

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. This Chapter not to prevent any person giving medical aid in certain cases.

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 shown. Term of office of members of Provincial medical board.

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 physician or surgeon, may practise Physic, Surgery or Midwifery in Nova Scotia with registry or license. Naval and military physicians or surgeons may practise in the 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.

- CHAP. 28.** 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.**

## SCHEDULE 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.

## SCHEDULE 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 two books of Euclid: Latin, one book,—translation and grammar.

And one of the following *optional* subjects: History of England, with questions in Modern Geography: French translation: German translation: one Greek book: Natural Philosophy, including elementary mechanics, hydrostatics, and pneumatics: History of Nova Scotia: History of the Dominion.

## CHAPTER 29.

CHAP. 29.

## 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.

Boards of Health, how appointed.

3. The Courts of General or Special Sessions 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 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 General or Special Sessions or the said City Council shall not appoint such health wardens the Board of Health shall appoint them.

Health wardens to be appointed by sessions.

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.

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 sanitary 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.

Fine for warden's refusal to accept office; and for misconduct; duration of appointment, &c.

**CHAP. 29.**

Cases of plague or imminent danger, how provided against.

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.

Powers as regards removal of sick persons, &c.

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.

General vaccinations, how ordered and provided for.

8. The general or any special sessions, consisting of not less than seven magistrates, 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.

Returns of poor persons vaccinated; remuneration.

9. All persons who shall vaccinate the poor and indigent, as above, shall return to the grand jury and sessions 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 county or city charges are.

Penalty for bringing infected persons into Province.

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.

Flag to be displayed on house in case of infectious disease.

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. CHAP. 30.

12. The reasonable expenses already incurred, or hereafter to be incurred, by any Board of Health, in carrying out the provisions of this Chapter, shall be a county or district or city charge, and shall be assessed by the justices in session and levied and collected in the same manner and at the same times as the ordinary county rates. Expenses of board to be county 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 Chapter.

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## CHAPTER 30.

### OF NUISANCES.

1. The General or any Special Sessions may by order appoint health inspectors and define the limits of their respective jurisdictions, and may fix the time, not to exceed one year, for which such appointment shall be in force. Within the limits of the jurisdiction of commissioners of streets the commissioners shall exercise such powers instead of the Sessions. All such inspectors shall be sworn into office. Health inspectors, how appointed; duration of office; limits of jurisdiction.

2. Every board of health, and in places where none exist three or more health wardens, and where neither exist a General or Special Sessions 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 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. Powers of inspectors.

## CHAP. 30.

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 justices in session or special court 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.

Privies and vaults, how and when to be emptied.

9. No vault or privy shall be emptied without a 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.

Waste water, how disposed of.

10. All waste water shall be conveyed through drains underground to a common sewer, or to such reservoir as the health inspector shall appoint.



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.

CHAP. 30.  
Dwelling houses, how vacated when public health endangered.

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 offence, or by any other party whom the justice shall appoint; and the expense shall be recovered as in the order prescribed.

Justice may, make orders for removing or destroying offensive substances.

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.

Penalty for sale of unwholesome food.

**CHAP. 31.**

Uncleaned fish and offal, how prohibited.

Limits for slaughtering animals to be regulated by sessions.

Penalties, how recovered.

Forfeiture for violation of orders.

Limitation of actions; prosecutions removed to Supreme Court, how conducted.

Fish may be sold.

16. The board of health or general sessions 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 uncleaned fish, and for preventing persons from throwing offal into any place likely to be offensive or dangerous to the public health.

17. Justices in general or special sessions may from time to time make orders fixing the extent and limit 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.

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 Peace. 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 county funds.

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.

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.

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.

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## CHAPTER 31.

### OF RABID ANIMALS.

Sessions to make orders for preventing danger from rabid animals.

1. The justices in general or special sessions 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. CHAP. 32.

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.

## TITLE VII.

### OF EDUCATION.

#### CHAPTER 32.

##### OF PUBLIC INSTRUCTION.

###### THE 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. Executive council to form council of instruction.

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. Superintendent of education.

3. The Council of Public Instruction shall have power : Council of public instruction, powers of.  
 (1.) To make regulations for the conduct of the Normal School, and to prescribe the conditions of admission and graduation of pupil teachers. To regulate normal school.

(2.) To appoint, upon the recommendation of the Superintendent of Education, an inspector of schools for each county of the Province. Appoint inspectors.

(3.) To prepare and publish regulations, under which moneys may be drawn and expended and teachers classified. To regulate drawing of money.

(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. Meetings of school boards.

(5.) To regulate the time in session, holidays and vacations of all public schools. To regulate holidays, &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. To prescribe text books, &c.

(7.) To prescribe the form of school registers for all public schools. School registers.

**CHAP. 32.**

To determine appeals from commissioners, &c.

To make regulations for academies.

To arrange for separate apartments.

To provide for exigencies arising under this Chapter.

To draw grant for school libraries.

Grant conditional.

To draw public grant for examiners, &c.

To publish report and journal.

To modify provisions as to inspection.

To appoint Provincial Board of examiners.

(8.) To determine all cases of appeal from the decisions of commissioners and trustees, and make such orders thereon as may be required.

(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.

(11.) To make any provisions, not inconsistent with this Chapter, that may be necessary to meet exigencies occurring under its operation.

(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.

(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.

(14.) To draw annually from the Provincial Treasury such sum as shall be necessary for the publication of the Annual Report of the Superintendent of Education, and of an educational journal, a copy of which journal shall be supplied gratuitously to each board of trustees for their own and the teachers' use, and also to each inspector and each chairman of commissioners.

(15.) To modify or change, from time to time, as the interests of education may require, the provision requiring an Inspector for each County, and to make such provisions for the payment of Inspectors consistent with economy and efficiency as they may deem proper; provided that the expense of inspection shall in no case be increased.

(16.) 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.

CHAP. 32.

Examiners, how paid.

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.

Council of instruction to superintend normal school, make regulations, appoint examiners, &amp;c.

## SUPERINTENDENT OF EDUCATION.

5. The Superintendent of Education shall receive an annual salary of one thousand two hundred dollars, and four hundred dollars for travelling expenses and contingencies of office. The Superintendent's duties shall be as follows:

Salary and duties of superintendent.

(1.) To have, subject to the Council of Public Instruction, the general supervision and direction of the Inspectors, the Normal School, County Academies, 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

**CHAP. 32.** 6. The Superintendent shall, with the approval of the Council of Public Instruction, withhold the provincial grant, or a portion thereof, from any teacher who has not complied with the requirements of this Chapter.

Superintendent, with approval of council, may withhold grant.

## COMMISSIONERS OF SCHOOLS.

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 five 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 semi-annual meeting. 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 semi-annually on the day appointed by the Council of Public Instruction, and shall elect a Chairman at the regular meeting in the Autumn, 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 b.c. ds.

10. Each Board of Commissioners shall fix a day, which shall be at least two days prior to the semi-annual meeting on or before which the returns of all common schools and county academies shall be lodged at the district office of the Inspector.

Returns, when to be lodged at inspector's office.

11. Each Board of Commissioners, at its semi-annual meeting, shall receive the Inspector's report as to the condition of the schools of the district, and the Board shall examine the several returns, and, if found satisfactory

Commissioners to receive inspector's report.

they shall be marked as approved by the Board, and shall be signed by both the Chairman and the Inspector; and if from any just cause, as specified in this Chapter, the Commissioners shall withhold their approval, they shall write upon the return their decision, with the grounds thereof; and each Board, upon the recommendation of the Inspector, shall have power to authorize the payment of the provincial grant to any licensed teacher who may have taught in more than one poor or scattered section for at least three months. All school returns shall be transmitted to the Superintendent of Education.

CHAP. 32.  
Approval or dis-approval to be endorsed on return.

Money, how granted to itin-erant teachers.

12. Each Board of Commissioners shall forward with the semi-annual returns, and Inspector's accounts, a certificate signed on behalf of the Board by the Chairman, and also by the Inspector, stating that, to the best of their knowledge, the accompanying distributions of provincial and county moneys have been made in accordance with the provisions of this Chapter.

Certificates of distribution.

13. Each Board of Commissioners shall have power:—  
(1.) To make such alterations in the existing boundaries of school sections, at any regular semi-annual meeting, as may from time to time be necessary, the Inspector having been consulted as to the propriety of any alterations, and to fix the time when such alterations shall take effect, whether at once, in six months, or in a year; and the Commissioners shall in all cases have due regard to the number of children, and to the ability of each section to support an efficient school; but they shall not divide towns and villages unless by the special direction of the Council of Public Instruction.

Powers of commissioners.  
To alter sections.

Mode of.

Limitation.

(2.) To declare upon the Inspector's report, or upon other reliable information, the school-house, or the houses or buildings used as such, unfit for school purposes. Such declaration shall be forwarded to the trustees of the section, and the Board shall thereafter withhold all provincial aid from any such section, if measures are not adopted whereby a suitable house or houses may be provided according to the ability of the section.

To declare school houses unfit.

Penalty on sections for neglect.

(3.) To withhold the provincial grant from any section presenting a false return, and also to withhold the grant in part or altogether from any teacher who may be found negligent of duty, immoral, or who may otherwise fail to sustain the standing indicated by his or her license; and the Board shall immediately report any such case, with a statement of the facts, to the Superintendent.

To withhold provincial grant in certain cases.

(4.) To settle any dispute arising between the trustees and teacher respecting the teacher's salary or duty.

To settle disputes between trustees and teachers.

(5.) To cancel the license of any teacher under their charge, who may become guilty of drunkenness or any

To cancel or suspend teacher's license.

**CHAP. 32.** gross immorality, and to suspend at their discretion the license of any teacher under their charge, for negligence of duty or incapacity, and to notify the teacher of the same, and the trustees by whom such teacher may be employed; and the Board shall immediately acquaint the Superintendent of any such case, and of the name, sex and class of the teacher whose license shall have been cancelled or suspended.

And to report to superintendent.

To appoint trustees in certain cases.

Commissioners may hold real estate in trust.

(6.) To appoint trustees, or a trustee for any section, in cases as hereinafter provided.

14. 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.

Cases when commissioners may withhold county money.

15. The Commissioners shall withhold the money provided by county assessment, from any trustees presenting a false return, and shall also withhold their approval of any school returns forwarded by them to the Superintendent if it shall appear that the teacher has been immoral, incompetent, or neglectful of duty, endorsing thereon explicitly their reasons for recommending the non-payment either of all or a portion of the provincial grant to such teacher.

Three commissioners may perform duties prescribed by sections 20 and 60.

16. 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 20 and 60 of this Chapter; and such committee when so appointed are hereby authorized to perform such duties.

Special aid for poor sections.

17. Each Board of Commissioners shall, in May of each year, determine what sections under its supervision are entitled to special aid as poor sections during the following school-year; and the Commissioners 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.

Boards of commissioners may unite two or more sections into one.

18. The several Boards of Commissioners shall have power at the semi-annual meeting in May of each year, 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 themselves as to the terms on which the existing liabilities shall be borne by the rate-payers of the several sections.



19. The union shall take effect on the day fixed by law **CHAP. 32.**  
 for the next annual school meeting, notice of which meet-  
 ing shall be issued by a County Inspector; and such meet-  
 ing shall elect a board of three trustees for the new  
 section.

Union, when to  
take effect.

20. Where any section, at the time fixed for the annual  
 meeting, fails to elect three trustees, or to fill the annual  
 vacancy occurring in the trusteeship, or vacancies from  
 other causes, the trustee or trustees shall be appointed,  
 upon the written requisition of seven rate-payers in the  
 section, by the Commissioners of Schools for the district  
 in which the school-house is situate, or in which a majority  
 of the rate-payers of the section reside; and where any  
 trustee or trustees have been elected, and refuse to act,  
 or shall neglect the performance of duty for twenty days  
 after such election, the Board of Commissioners shall  
 appoint trustees, or a trustee, in place of the persons or  
 person so refusing to act; and in case any person, appointed  
 by the Board of Commissioners as a trustee, shall refuse  
 or neglect to act as aforesaid, the Board of Commissioners  
 shall make such further appointments as may be necessary  
 to fill any such vacancy; 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.

Commissioners  
to appoint  
trustees in cer-  
tain cases.

21. 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 com-  
missioners as to  
islands and  
sparsely peopled  
districts.

#### TRUSTEES.

22. Each school section shall have a Board of three  
 Trustees; and no section shall have more than one Board.

Three trustees  
for each section.

23. At the first annual meeting of any section, under  
 this Chapter, the majority of the qualified voters present shall  
 elect from their own number 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

Mode of appoint-  
ing trustees.

**CHAP. 32.** 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 re-election; but it shall always be competent for existing Trustees to complete the business of the closing school year.

Trustees, how disqualified to act, &c.

24. Any person holding the office of Trustee of Schools in any section, who shall become insolvent or assign his property for the benefit of his creditors, or become permanently unfitted for business, or shall cease to reside in the section, shall thereupon cease to hold such office of Trustee; and the other Trustees shall call a meeting for the election of a new Trustee in his stead, as provided in the case of extraordinary vacancies.

Penalty for not acting as trustee.

25. Any person elected or appointed a Trustee, not being a Commissioner of Schools, and refusing to act, or any Trustee who, having accepted office, shall not perform the duties thereof, shall, for every such offence, 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.

Trustees may co-operate with trustees of institutions receiving separate grants.

26. 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.

May admit to school pupils from other sections.

27. The Trustees of any section 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 body corporate.

28. 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 ground 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 five, to be assessed upon the section; and the money so borrowed shall be a charge upon the school section.

Trustees to insure.

29. The Trustees in the several counties are authorized to effect insurances on school-houses.

30. The duties of the Trustees shall be as follows:— CHAP. 32.

(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.

Duties of trustees.  
To meet and organize.

(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.

(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:—

To provide school accommodation as follows:

(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;

**CHAP. 32.** 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.

31. 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.

Trustees shall regulate attendance of pupils in several departments.

32. 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.

Shall regulate attendance when council permits separate departments.

33. 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.

Trustees' further duties.  
Shall employ teachers.

34. 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.

Give notice of opening of schools.

(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. CHAP. 32.

(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 54, 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.

(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.

(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.

Expel or suspend pupils.

(7.) To adopt efficient measures for the preservation of the health of the school.

Health of school.

(8.) To call a special meeting of the section, due notice being given by means of the school or otherwise, for the purpose of filling any extraordinary vacancy occurring in the Board of Trustees, and for any other necessary purpose; and at any such meeting a chairman and secretary shall be appointed, as provided for the annual meeting.

May call special meetings.

(9.) To present an annual report on the state of the school or schools, and of the doings of the Board, at the regular school meeting in September.

Annual report.

(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 are more than one department in the section, a return for each, indicating the grade of each department; and to lodge

School returns.

A return for each department.

- CHAP. 32.** 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 each Board of Commissioners, under whose supervision a part of the section may lie, marking the same as a *border section*, and stating also in each return the number of rate-payers resident within the portion of each district embraced in the same; and, if the Trustees of any section shall present a false return, the provincial grant shall be withheld from the section over which they preside.
- To be forwarded by a certain day.** 35. 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 rateably up to the time of his or her suspension or dismissal.
- Return of border sections.** 36. 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.
- Penalty for false return.** 37. Upon the requisition of the majority of the rate-payers of any section, 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; notice of which meeting shall be given by the Trustees, as provided in the case of the annual meeting, and such notice shall express the object of such meeting.
- May suspend or dismiss teachers.**
- Notification of same.**
- Pay of such teachers.**
- May exempt from school tax.**
- Special meetings to vote money.**

## SECRETARY OF TRUSTEES.

- Bond given by secretary of trustees.** 38. 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 Peace for the county or district.
- Secretary's commission.** 39. 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, in

cluding expenditure for rents, repairs, furniture, out-  
houses, fuel, maps, apparatus and salaries; except in cases CHAP. 32.  
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  
within twenty days after the collector's roll is made up  
and posted up in at least three public places in the district.

40. The Secretary's duties, to be performed under the Duties of secre-  
tary.  
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, out-houses,  
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 inven-  
tory 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 pro-  
vided for in section 39.

(7.) To take due care of the library books of the sec-  
tion, 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.

41. There shall be paid annually from the Provincial Amount of an-  
nual provincial  
grant.  
Treasury, for Common Schools throughout the Province,  
the sum of one hundred and seventeen thousand dollars;  
out of which sum there shall be paid to the City of Halifax  
seven thousand five hundred dollars.

42. After deducting such sum of seven thousand five Mode of distri-  
bution.  
hundred dollars, the balance shall be distributed between  
the several counties of the Province, according to the  
grand total number of days' attendance made by all the  
pupils in the public common schools throughout the  
Province.

**CHAP. 32.**

Bonus to certain teachers.

Proviso.

Grant not to be less than that of 1872.

Proviso.

Money to be paid semi-annually through inspector.

Payment to teachers of various grades.

To assistants.

Grand total, &c., defined.

Payments made on attendance of previous year.

Employment of unlicensed teachers not authorized.

43. All teachers holding Provincial Licenses of grade A or B, who shall have been employed in teaching in the public schools of this Province, for a period of not less than five years, shall receive an annual bonus of thirty dollars each, payable half-yearly; provided that this section shall not apply to head masters of county academies or to principals of special academies.

44. If, in the distribution of the before-named annual grants, the result shall exhibit for any county a sum less than the Provincial Grant for the corresponding term of 1872,—less the special grant to poor sections, the Council of Public Instruction is authorized to grant to such County such additional sum as may be requisite to make the sum total equal to the Provincial Grant for the corresponding term of 1872—less the special grant to poor sections;—provided always that when such extra or supplemental aid is given, the decrease in the attendance shall not be more than ten per cent. of the grand total days' attendance for the county for the corresponding term of 1872.

45. 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 Trustees, according to the number of days the schools have been in session, and the grade-license held.

46. The payment to teachers, according to grade shall be in the following proportions:

Grade B.....	1
“ C.....	$\frac{2}{3}$
“ D.....	$\frac{1}{3}$
“ E.....	$\frac{1}{3}$

47. Assistant teachers, if provided with separate classroom, and regularly employed at least four hours in each day, shall receive two-thirds the amount granted to principal teachers of the same grade.

48. The term, “grand total number of days' attendance,” mentioned in the forty-second Section of this Chapter shall be understood to mean the sum of all the total days' attendance by the registered pupils in the public common schools throughout the counties.

49. The distribution for each term shall be made on the total number of days' attendance during the corresponding term of the year next preceding that for which the distribution is made.

50. Nothing in sections 45 or 47 shall be construed to authorize the employment of unlicensed teachers in any of the public schools of this Province.



51. The county school rate assessed upon the inhabitants of any section not provided with a suitable school-house, and unable to erect one, shall be retained for two years; and if within that time means shall be adopted to build a school-house, the moneys so vested shall form part of the amount required for such purpose. The assessors shall return yearly to the Clerk of the Peace a statement of the amounts levied for such county rate upon such section.

**CHAP. 32.**

Disposition of county school rate in section where there is no school.

52. The Clerk of the Peace in each county, except as hereinafter provided in relation to the City of Halifax, shall add to the sum annually voted for general county purposes at the general sessions, a sum sufficient, after deducting costs of collection and probable loss, to yield an amount equal to thirty cents for every inhabitant of the county, according to the last census preceding the issue of the county rate-roll; and the sum so added shall form and be a portion of the county rates. One-half the sum thus raised shall be paid semi-annually by the County Treasurer upon the order of the Board or Boards of School Commissioners for the county.

Clerk of Peace for each county (city of Halifax excepted) shall add a sum equal to 30 cts. a head to amount annually voted for county purposes.

One-half to be paid half-yearly to order of school commissioners.

53. 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, 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 trustees of schools conducted under this chapter.

Ratio in which schools shall participate.

54. Any sum required by any section, over and above the sums provided by the Province and county, 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 out-buildings, 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 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 twenty-one years of age or upwards, having resided in such section for the period of six months next previous to the levying of such assessment, shall be assessed, and shall pay the sum of one

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. 32.**

Rates, how collected.

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 county of the residents of the section according to the county 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 there signed by the trustees, authorizing and directing the 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 assessed; and, in default of payment, the same shall be collected under and by virtue of the Chapter of the Revised Statutes, "Of County Assessments;" and the trustees shall return such assessment to the general sessions, or to a special sessions held for that purpose where appeals shall be had and determined. The words "real and personal property within the county 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 County.

Definition.

Payer of poll-tax qualified to vote at election of trustees.

55. 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, as provided in section 54, 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 and shall be eligible to be elected as a trustee; provided nevertheless, that a majority of the trustees shall be persons rated in respect of real or personal property. 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.

Proviso.

Clerk of the peace shall notify superintendent of education and inspector of sum assessed.

56. Each Clerk of the Peace 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 county assessment for the support of schools during the ensuing year.

One-half of county rate shall be advanced from Province every May.

57. One-half the amount assessed as a county rate in the several counties for the support of schools shall be advanced from the Provincial Treasury in May of every year.

58. Where counties are divided into districts holding **CHAP. 32.**  
 general sessions of the peace, the term "county," in this  
 Chapter, shall, for all the purposes of the Chapter, be held  
 to include and apply to such districts as fully as if such  
 districts had been specially mentioned therein.

Where counties  
 are divided into  
 sectional districts  
 term "county"  
 shall include  
 district.

59. In every school section containing twelve or more  
 children over five years of age, and in which there is,  
 according to the assessment roll of the county, taxable  
 property to the value of four thousand dollars or upwards,  
 there shall be kept for at least one school term in each  
 year a public free school; and, in all sections where sec-  
 tional assessment is not required, the trustees shall establish  
 a public free school.

When public  
 free schools com-  
 pulsory.

60. 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-py-  
 ers do not make  
 necessary assess-  
 ments.

61. Property situate in any school section, and owned  
 by a non-resident of the county, the same not being other-  
 wise liable to sectional assessment, shall be liable to assess-  
 ment in the section in which it is so situate.

Assessment of  
 property of non-  
 residents.

62. The assessment of any person who shall subse-  
 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 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 re-  
 presentatives.

63. 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  
 remove from the section, having conveyed, leased, or other-  
 wise 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

In case of trans-  
 fer between mak-  
 ing roll and  
 levying, assess-  
 ment collected  
 from holder at  
 time of levying.

**CHAP. 32.** 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.

64. 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 sixty-second section.

Certain persons exempt as to property under \$500.

65. Any person making affidavit, if required, that he was sixty years of age or upwards at the time any assessment was authorized, and also 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.

Certain property exempt from seizure.

66. 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.

67. 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.

68. It shall be the duty of assessors to assess all the rateable 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 specify distinctly their valuation of the portion in each also of the portion, if any, not included in any school section.

69. 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 rateable 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 rateable 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.

CHAP. 32.

Assessed for benefit of section where situate.

70. 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 Peace to refer the roll back to the assessors for correction or amendment.

Roll may be referred to assessors.

71. There shall be granted annually the sum of six thousand six hundred dollars towards the support of county academies, to be constructed and located in accordance with the directions of the Council of Public Instruction; such sum to be applied as specified in the Schedule to this section, and to be payable half-yearly.

Provincial grant to county academies.

#### Schedule.

<i>County of Annapolis</i> . . . \$600	<i>County of Lunenburg</i> .. \$600
<i>County of Cape Breton</i> . 600	<i>County of Queens</i> . . . . 600
<i>County of Cumberland</i> . 600	<i>County of Richmond</i> ... 600
<i>County of Digby</i> . . . . 600	<i>County of Shelburne</i> ... 600
<i>County of Guysborough</i> 600	<i>County of Victoria</i> .... 600
<i>County of Inverness</i> ... 600	

#### SCHOOL MEETINGS.

72. 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 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.

Annual school meeting, when held.

Notice.

73. At the annual school meeting the majority of the ratepayers, 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

Meeting, how organized.

**CHAP. 32.** 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.

74. 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:—

Declaration.

“I do declare and affirm that I am a rate-payer; that I reside in this school section, 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.

75. 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 situated [provided such land belongs to the same parties who own the house] to the section, at an 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.

#### INSPECTORS.

Inspector's pay.

76. Each Inspector shall receive semi-annually from the Treasury the sum of one dollar and a half for each school inspected by him during the half-year; and for every teacher regularly employed in his county a sum equal to five per cent. on one-half the average of the annual grant to the several classes of teachers, as specified in sections 41 to 50 of this Chapter; also an allowance for stationery postage and printing, not to exceed ten dollars for each

Board of Commissioners of which he is clerk. It shall be the duty of the inspector--

CHAP 32.

Duties.

- (1.) To act as clerk of each Board of School Commissioners within his county; and to draw in November and May in each year from the Treasury, upon the order of the chairman, the provincial money, as provided by this Chapter, and promptly deliver to licensed teachers personally, or upon their written orders, their provincial allowances and drafts upon the county or district treasurer:
- To act as clerk of commissioners, and draw and distribute provincial grant.
- (2.) To give a bond to Her Majesty, in double the sum granted to his county, for the faithful discharge of the duties of his office:
- To give bonds.
- (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 keep record of school sections.
- (4.) To visit and inspect, half-yearly, each school and county academy within his county, and report fully upon its condition to the 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 inspect schools.
- (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:
- To aid teachers with necessary information, &c.
- (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:
- 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
- To make returns and report.

**CHAP. 32.** labors, noting the condition of the schools in his count, 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.

**Bounds of sections, how determined in law.** 77. The certificate of any inspector shall be received in courts of law as evidence of the boundaries of school sections.

## TEACHERS.

**To receive portion of grant, teacher must be licensed.** 78. 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—

**Duty of teachers.**

**Not to establish schools without agreement with trustees.**

**To teach efficiently, &c.**

**To call roll and keep register, &c.**

**To co-operate with trustees.**

**To inculcate principles of christian morality.**

**To have special regard to health and comfort of pupils.**

**To have special care of books, &c.**

**To reimburse trustees for destruction of school property.**

(1.) Not to attempt to establish a school in any section without first making an agreement with its 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 engagement entered into with the trustees, and the provisions of this Chapter:

(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 times open to the inspection of the trustees, visitor examiners, commissioners, inspectors, and superintendent

(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:

(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:

(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:

(7.) To have a special care to the usage of school books and apparatus, the neatness and order of the desks, and the cleanliness and ventilation of the school-room:

(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.



(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 : CHAP. 32.  
To hold public examinations.

(10.) To give notice, through the pupils, of school meetings advertised by the Inspector or trustees : To give notice of meetings.

(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 furnish general school information.

(12.) To sign a certificate attached to the half-yearly return, truly stating that the school register has been faithfully and impartially kept, and that his or her school duties have been punctually discharged. Any teacher signing a false certificate shall have his or her license cancelled or suspended, as the Commissioners may decide. To certify correctness of returns.

## MISCELLANEOUS.

79. Members of the Legislature, ministers of religion, and magistrates, shall be visitors of schools. Visitors of schools.

80. The Superintendent, inspectors, teachers of the Normal and Model Schools, and licensed teachers while employed as such, shall be exempt from statute labor, and from serving in any town office, or on juries; and they, while so employed, shall be exempt from poll-tax and all other taxes [the same not being for the support of schools] on property to the value of two thousand dollars; but they shall be liable for any excess of that sum. Inspectors, teachers of the Normal School, and licensed teachers, are liable to the school tax in full. The Superintendent is exempt from school taxes on property to the value of two thousand dollars, but is liable for any excess of that sum. Exemptions of superintendent, inspectors, and teachers.

81. The school year shall consist of a winter and a summer term. The Winter Term shall begin on the first 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. Winter and summer terms.

82. The Governor in Council shall have power to appoint a Principal of the Normal and Model Schools, at a salary not exceeding twelve hundred dollars per annum, who shall appoint such assistants, with the approval of the Council of Public Instruction, as may be found necessary. Governor in Council to appoint principal of normal school &c.

83. The following terms used in this Chapter shall mean as herein defined, except where the context shall preclude such definition :— Definition of terms.

"Section": That portion of territory the school or schools of which may be presided over by a board of trustees.

**CHAP. 32.** "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.*

84. The City of Halifax shall be one school section; and there shall continue to be thirteen Commissioners of schools for such City appointed [seven by the Governor in Council and six by the City Council] under the provisions of section 1 of Chapter 9 of the Acts of 1868, as modified by Chapter 27 of the Acts of 1869; and the thirteen 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 trustees of public schools in and for the City.

*City council to fill certain vacancies.*

85. All vacancies occurring by any means, either by the death, retirement from the City Council, or otherwise, of any of such Commissioners appointed by such Council, during the current year after selection, shall be filled as soon as may be by the City Council; and at the end of such year the same members or any of them may be re-elected by such Council.

*Duties of board of commissioners.*

86. 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.

*Board of commissioners may aid any city school, provided it be a free school.*

87. 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 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.*

88. 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 school 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.

CHAP. 32.

Mode of assessment.

Not to exceed \$60,000.

89. 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.

Objects provided for out of assessment.

90. 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 into any contract for the purchase of any land nor for the erection of any school building until such contract has been submitted to, and obtained the approval of the Governor in Council.

Board may borrow money for sites and buildings.

Provided.

91. To enable the Commissioners to borrow money, 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;

Board may issue debentures.

**CHAP. 32.** 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 countersigned by the secretary.

Title to public school property (except Halifax Grammar School) vested in board of commissioners.

92. The Board of Commissioners are hereby invested 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.

Chairman of board.

93. The commissioner, whose name shall stand first on 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.

Each male resident of full age to pay one dollar for support of public schools.

94. Every male person of full age having been resident 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.

Superintendent to pay commissioners grants to teachers.

95. The Superintendent of Education shall be empowered to pay to the Board of Commissioners the grants provided by law for teachers and assistants employed in the City.

Commissioners may dispose of debentures.

96. The Board of Commissioners for the City shall be empowered to dispose of debentures, authorized under this Chapter, at current rates.

Commissioners to receive \$1,000 annually.

97. The Board of Commissioners for the City shall be entitled to receive a sum, in no case to exceed a thousand 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.

98. 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.

99. The Commissioners of Schools for the City of Halifax are authorized to effect insurances on school-houses.

CHAP. 33.

Commissioners may insure school-houses.

100. 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.

How far provisions of Chapter apply to Halifax.

## TITLE VIII.

### OF THE POOR.

#### CHAPTER 33.

##### OF THE SETTLEMENT AND SUPPORT OF THE POOR.

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.

Definition of terms.

2. The grand jury shall annually at the sessions nominate ten freeholders out of every township, of whom the court shall appoint five to be Overseers of the Poor; and if any person so appointed shall cease to reside in the township, or shall die within the period for which he was appointed, any two justices of the county may appoint another to act instead until the next meeting of the grand jury and court of sessions; and such overseers and their successors in office shall be a body corporate.

Overseers of poor, how appointed.

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 and county rates in the township during one year at one time, shall be entitled to a settlement; and any person who shall have resided in any poor district for five 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.

Settlement, how gained.

Persons entitled to a settlement in the district.

Under age.

**CHAP. 33.**

Settlement of children.

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 birth-place of such child shall be the place of settlement.

Settlement of married women.

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.

Settlement, when to cease.

6. A legal settlement shall cease when a new one is gained, and shall not revive.

In case of division of district, &c.

7. When a poor district shall be divided or a new district created, the settlement of any person dwelling 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.

Proceedings preparatory to the removal of a pauper.

8. Any person applying to the Overseers of 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 incurred, shall be transmitted to the Overseers of the Poor of the township to which such person belongs.

If the overseers of the place of his 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 his 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. 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 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 grand children 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 a general or special sessions shall direct, and, in case of refusal, shall forfeit one dollar per week for such poor person, to be sued for in the name of the Overseers of the Poor. CHAP. 33.

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 when the seizure shall be confirmed by the sessions 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.

Property of persons forsaking their families may, if necessary, be seized and sold for their support.

13. The children of deceased parents who have gained a settlement in any township shall, if paupers, be supported by such township.

Children supported where parents had settlement.

14. If any overseers on behalf of the township or any other person shall feel aggrieved by any proceedings under this Chapter, such overseers or person may appeal to the next sessions to be held for the county where the township is or the person shall reside, and the sessions shall hear and determine the same; but in case of disputed settlement an appeal shall lie from their decision to the next term of the Supreme Court in the county or to a judge at chambers.

Appeals provided for parties aggrieved.

Appeal in cases of disputed settlement.

15. If the justices on an appeal concerning the settlement of a poor person determine that such poor person was unduly removed, they shall then or at a future sessions 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 a 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 justices shall then or at a future sessions order to the successful party on a trial, or to the party notified if not further prosecuted, such costs as in their discretion are reasonable, to be taxed and allowed according to the rates adopted in the Supreme Court, which shall be paid by the unsuccessful party or 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

Amount ordered to be paid, how recovered.

**CHAP. 33.** 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.

**Townships liable for support of poor after notice.** 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.

**Penalty for improperly bringing a pauper into a township.** 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.

**Town meetings, and days for holding.** 20. The inhabitants of every township liable to pay poor rates shall hold two meetings annually if necessary, to provide for the support of their poor, which shall be held on the first Mondays of April and November, except in the township of Dartmouth, wherein the first of such annual meetings shall be held on the first Monday of March.

**Overseers to notify meetings by advertisement.** 21. The Overseers of the Poor in the several townships shall, at least ten days before the times appointed for holding meetings to provide for the support of the poor, cause advertisements to be posted up in at least five of the most public places in the township, notifying the inhabitants to meet on the several days respectively for that purpose, and in case of neglect such Overseers shall forfeit forty dollars.

**Proceedings at meetings; money to be voted; assessors chosen.** 22. The inhabitants present at such meetings having first chosen a chairman to preside, shall vote such sums of money as they shall judge necessary for the support of the poor for the current year, or until the next meeting, and incidental expenses connected therewith; and shall choose as many collectors as they shall deem necessary to collect the poor rates for the district or township within which such meeting shall be holden, and shall also choose a clerk to be called the Clerk of such poor district, who shall act as clerk to the Overseers of the Poor for the district; and such inhabitants shall award to their clerk a reasonable remuneration, to be fixed at such meeting, and added to the amount to be assessed on the district. In case of failure of the inhabitants of any district to appoint a clerk of such district as hereinbefore provided and to award him remuneration, it shall be lawful for the Overseers of the Poor of such district to appoint such officer and to remunerate him for his services.

**Clerk appointed, &c.**



23. If the business of the meeting cannot be completed on the days above respectively named, the chairman, with the consent of the majority of those present, shall adjourn the meeting as occasion may require to conclude the business.

CHAP. 33.

Meetings may be adjourned, if necessary.

24. If the money voted at any meeting shall be insufficient for the support of the poor, the inhabitants at their next meeting shall vote sufficient to make good the deficiency.

Deficiencies of money may be voted at subsequent meeting.

25. The inhabitants, if deemed advisable, may at such meeting determine to erect or hire a building for a poor house, and may vote money for that purpose and for the annual repairs and other necessary expenses connected therewith; and thereupon the Overseers shall proceed to hire or erect a building as directed, the title and interest in which, when conveyed to them, shall vest in them and their successors in office as a body corporate. The Overseers shall have the control and management of the poor house and the supervision and government of the inmates, and may appoint the officers and keepers thereof, and may purchase materials upon which the labor of the poor may be profitably employed. They shall annually submit an account of their proceedings and of the general state of the institution and of their receipts and expenditures, for the examination and audit of the sessions.

Poor houses may be built or hired; title, how vested; poor, how managed.

26. 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 issue a general warrant of distress against the several defaulters in the form in 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.

Proceedings to collect rates shall be by general warrant of distress; form given, fees, &c.

**CHAP. 33.**

**Appellants to be relieved by the sessions.** 27. The justices in general or special sessions, 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.

**Parties liable to be assessed.**

28. 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.

**Overrated persons may appeal.**

29. If any person think himself over-rated he may appeal to the next sessions or to the next special session to be held for hearing such appeals, in the county or district wherein the assessment was made; and the order of such court of appeal shall be final.

**Appropriation of moneys; collectors may be sued by overseers.**

30. 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.

**Accounts of overseers, when and how rendered.**

31. The Overseers of the Poor shall within one month after the expiration of their term of office render to the Clerk of the Peace of the county in which they reside, to be laid before a general or special sessions, 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 sessions. 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.

**Sessions to audit accounts.**

32. The general or special sessions 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.

**Fine for refusal to serve as overseer.**

33. Every person appointed an Overseer of Poor who shall refuse to serve shall forfeit twenty dollars, to be recovered by the Overseers of the Poor next in office for the same place.

**Fine for neglecting to render accounts.**

34. Overseers of Poor who shall not within one month after the expiration of their term of office render to the Clerk of the Peace an account of all sums of money received and expended by them, shall forfeit twenty dollars.

**Townships amerced by sessions in case of neglect to assess for support of poor.**

35. If the inhabitants of any township shall neglect to meet as required, or having met, shall neglect to make adequate provision for the support of their poor, the justices in session or any special sessions called for the purpose, shall, on the application of the Overseers of the Poor for such township, amerce the same in a sum necessary for that purpose; and if such justices refuse or neglect to

make such amercement, a judge of the Supreme Court shall do so. CHAP. 33.

36. Every person appointed a collector who shall refuse to serve shall forfeit eight dollars, and another collector shall forthwith be appointed in his place. Collector refusing to serve.

37. Every collector shall collect the whole rate as far as may be practicable, and shall account with and pay over the same to the Overseers within three months from the time at which he shall receive the rate list; and, upon neglect so to account and pay, the same may be recovered by the Overseers as a private debt. Collectors to account and pay over to overseers once every three months.

38. Every collector who shall neglect for thirty days after acceptance of office to perform the duty thereof, shall forfeit twenty dollars. Fine for collector neglecting duty.

39. When any person shall apply for and obtain relief from the Overseers, 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 repaid, the Overseers may demand and recover from such person a repayment of the expenses so incurred, as if it were a private debt; and any money recovered shall be accounted for by such Overseers as other public money. Persons receiving aid shall refund the amount if able.

40. 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.

41. The sessions 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.

42. All forfeitures under this Chapter when recovered, shall be applied to the support of the poor of the township. Forfeitures, how applied.

43. The inhabitants at one of their meetings may, if they see fit, provide a salary for an officer to be called clerk and treasurer of the district, and thereupon may appoint a person, not being an overseer, assessor or collector, to fill the office. He shall give a bond to the Overseers by their name of office, with two sureties, in double the amount of the annual assessment, or thereabouts, conditioned for the faithful discharge of his duty, and shall be sworn into office. Clerk and treasurer may be appointed; bonds to be given.

44. The clerk shall be under the direction of the town meeting while in session, and shall keep a correct record of its proceedings from time to time in a book to be furnished him for that purpose, which book shall be open for inspection to all rate-payers at all reasonable times. He shall assist the assessors, when required, in writing out and copying rate bills; he shall assist the Overseers in making up their accounts, and shall audit and check the same. Duty of clerk.

## CHAP. 33.

Duty of treasurer.

45. The treasurer shall be under the direction of the township meeting while in session, and he shall be authorized to give receipts and discharges to collectors for moneys paid by them to him, and he shall pay over moneys so received, upon orders addressed to him in that behalf by the Overseers; he shall file away for future reference all accounts, papers and vouchers relating to his office, and produce the same when required by the town meeting or the Overseers, and shall generally discharge the duties of clerk and treasurer to the district; he shall not receive or take any commissions or other remuneration except his salary, which shall not be required to be voted annually, but shall be continued until otherwise altered by a vote of the town meeting.

Chapter, how far applicable to city of Halifax.

46. 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.

Same person may be clerk and treasurer.

47. The meeting may appoint one and the same person to be clerk and treasurer if they see fit.

Board of poor not to be auctioned.

48. 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.

49. 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 Chapter 21, so altered as to answer the purpose of collecting both rates, shall be used.

## SCHEDULE.

*Form of general warrant of distress.*

County 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 **CHAP. 34.**  
 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 dis-  
 tress, 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 forth-  
 with 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  
 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.)

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## CHAPTER 34.

### OF POOR DISTRICTS.

1. Poor districts as now established shall so continue until altered by law. Poor districts confirmed.

2. If twenty or more of the rate-payers within any township established for the support of poor shall, by petition, apply to the court of sessions, stating their desire that such township should be divided into two or more districts, and setting forth the proposed boundaries thereof, the court may, if they think fit, pass an order calling upon the parties interested to shew cause at the next sessions why such division should not be made. Proceedings for dividing districts; sessions may make orders for shewing cause.

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 township sought to be divided, for at least thirty days next previous to the ensuing sessions. Orders to be posted.

4. At such sessions the court may, if they think fit, make an order dividing the township, 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. Orders may be made dividing townships into districts, with names, &c.

## CHAP. 35.

Sessions may, by order, adjust expenses and the support of present paupers.

5. The sessions shall thereupon also ascertain the number of paupers then chargeable on the whole township divided 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.

Sessions may re-adjust expenses and subsequent orders.

6. The court of sessions 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 township, thereby 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.

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CHAPTER 35.

## OF THE MAINTENANCE OF BASTARD CHILDREN.

Information of woman pregnant with a 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 township, 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 township 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 township, 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 township 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 township. CHAP. 35.

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.

Where reputed father not found, or in another jurisdiction warrant may be endorsed over.

5. The reputed father shall then enter into a bond with one surety to fulfil 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 eighty dollars, 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 justice's 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 township 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

Information within three months after birth, and justice's warrant thereon.

**CHAP. 35.** had thereon as directed in cases where the mother has disclosed the name of the father before the birth.

When reputed father cannot be served, order of filiation may be made in his absence; proceedings 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 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 township 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 herein before 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 Term of the Supreme Court to be held in the county except in Halifax, where the appeal shall be to the next general sessions, where the whole matter may be heard and tried by a jury 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.

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 township 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 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 Township of —, and that C. D., of —, is the father of such child. CHAP. 35.

A. B.

Sworn before me, this — day of — A. D., 18.—  
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 Township 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 bringeth me this warrant, and all other persons to whom the same was

CHAP. 35. 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 deposeth 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 Township 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 Township 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; 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 Township 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 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.* CHAP. 35.

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 Township of \_\_\_\_\_, and that C. D. of \_\_\_\_\_, is the father of such child, and that such child is now living and chargeable to the Township of \_\_\_\_\_, and the Overseers of the Poor of such Township 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 personally attend at the same time and place.

Witness our hands 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 Township 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 Township of \_\_\_\_\_, and that such child is now chargeable to the Township of \_\_\_\_\_, and likely so to continue, and that C. D. of \_\_\_\_\_ is the father of such child ;

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 Township 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 Township the sum of \_\_\_\_\_ towards the lying in of the said A. B. and the maintenance of such child up to this date ;

CHAP. 35. And further that the said C. D. shall pay to the Overseers of the Poor of the said Township for the time being the sum of \_\_\_\_\_ weekly from the date hereof during so long time as the child shall remain chargeable to such Township, 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 Township the sum of \_\_\_\_\_ weekly so long as the child shall be chargeable to the Township 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 Township 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.*

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 CHAP. 35.  
order of filiation where the father shall have been present.

*Bond to abide and fulfil 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 Township 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., 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.*

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 Township 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 Supreme Court [*or sessions at Halifax.*] Now the condition of this obligation is such, that in case such order

**CHAP. 36.** 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 Township, in consequence of such appeal and also do obey such order so confirmed, this obligation shall become void.

Signed, sealed and delivered } in the presence of }	C. D. (seal.) G. H. (seal.)
J. K.	

## TITLE IX.

### OF LUNATICS.

#### CHAPTER 36.

##### OF LUNATICS AND THE CUSTODY AND ESTATES OF LUNATICS.

**Securing 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 county or district, 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 county or district 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 county or district within which such person shall have his last legal settlement.

**Charge of maintenance, &c.**

**Appointment of guardian for lunatics.**

2. When the relatives or friends of any insane person or the overseers of the poor of the township of which he is an inhabitant, shall apply to the Supreme Court or Judge thereof to have a guardian appointed for him, noti

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 have the care and custody of the person of the ward and the management of his estate until legally discharged.

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3. 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.

Payment of guardian.

4. 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 pay out of lunatic's estate, debts, &amp;c.

Guardian to represent lunatic in all suits.

5. 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.

Guardian to arrange lunatic's estate.

6. 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.

Sale of lunatic's estate.

7. 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 others interested, may remove him; and every guardian may upon his own request be allowed to resign his trust,

Guardian becoming incompetent may be removed.

**CHAP. 36.** 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.

Guardian to give bond.

8. Every guardian shall give a bond, with sureties, to Her Majesty with the following conditions :

*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.

Payment of expenses of apprehension and removal of insane person.

9. The reasonable expenses of the apprehension and removal of any insane person, having been verified on oath before the Custos 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 county or district out of the county or district funds, to the person appointed to apprehend and remove such insane person ; and such expenses shall afterwards be levied, by warrant of distress 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 county or district in which such insane person shall have had his last legal settlement, as hereinafter provided.

Prevention of crime.

10. 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 CHAP. 36.  
 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.

11. Any two justices may inquire into and ascertain, by Examination of  
insane persons  
and expenses  
thereof. the best legal evidence that can be procured under the cir-  
 cumstances of the personal legal disability of such insane  
 person or dangerous idiot, the place of the last legal set-  
 tlement of such person, or of any other person tried and ac-  
 quitted 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 legal-  
 ly 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 as-  
 certained, such order shall be made on the Treasurer of  
 the county or district 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 recogni-  
 zance for the peaceable behavior or safe custody of such  
 insane person or dangerous idiot, before two justices of the  
 peace, or the court of sessions, 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 next general or  
 special sessions to be held 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 re-  
 moval, giving reasonable notice thereof to the Clerk of the  
 Peace of the county or district upon whose rates the bur-

**CHAP. 36.** den of maintaining such insane person or dangerous idiot might fall if such order should be invalid ; and such Clerk of the Peace shall be respondent in such appeal, which appeal the justices of the peace assembled at such general or special sessions 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.

Payment of expenses incurred by overseers of poor.

12. All charges herein mentioned that may be incurred by any overseers of the poor for any township or place, or by any county or district, under this Chapter, having been first proved on oath before two justices, shall be repaid to such overseers or to the Treasurer of the county or district respectively, 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 County or District Treasurer, under a warrant from two justices ; and, for want of such property, such expenses shall be paid by the county or district 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.

Qualification of medical practitioner.

13. 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.

#### HOSPITAL FOR THE INSANE.

Title and object of hospital for insane.

14. 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.

Management of hospital.

Visitors.

15. The financial and general management of the Hospital shall be vested in the Commissioner of Public Works and Mines. 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 Commissioner of Public Works and Mines shall make all needful bye-laws for the government of the Hospital, not inconsistent with the laws of the Province ; but, before such bye-laws shall have effect, they shall be submitted to and approved of by the Governor in Council.

Bye-laws.

16. 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.

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Appointment of medical superintendent.

17. 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 and lodging.

Medical assistant.

18. The Governor in Council shall also appoint three persons as a board of Commissioners, who shall have and exercise a general supervision over the Nova Scotia Hospital for the Insane, and who shall be paid two hundred dollars a year, each, for their services; and they shall meet quarterly at the Hospital, and as often there and elsewhere at other times, as business or circumstances may require. One or more of them shall visit the Hospital at least once a week. They shall see that the laws of the Province and the bye-laws of the institution are faithfully adhered to and carried out; shall inspect the books and records of the institution; view the wards and premises appropriated for the use of the patients; as far as practicable examine their food, and see that the contracts in reference thereto are duly performed; and shall also make inquiry relative to the health, treatment and general condition of the inmates; and they shall make entries as to the result of their visitations in a book to be kept at the Hospital for that purpose.

Board of commissioners, their duties, &amp;c.

19. Whenever there are vacancies in the Hospital, the Commissioner of Public Works and Mines shall admit patients for whom admission is sought; but he 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.

Admission of patients.

20. 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 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.

Statement in writing to be given to Superintendent.

**CHAP. 36.**

Private paying patients.

21. In case of private paying patients, a bond shall be given to the Commissioner of Public Works and Mines 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, after recovery had, agreeably to proceedings in summary suits in the Supreme Court.

Warrant for commitment.

22. 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 county or district in which the insane person shall be found; and such insane person shall be chargeable to the county or district from which he shall have been sent to the Hospital under such warrant, unless it shall be shewn to the satisfaction of the Commissioner of Public Works and Mines that such insane person is legally chargeable as a pauper to some other county or district, or has no legal settlement in the Province, or is chargeable to a guardian or other person.

Settlement of disputes between counties chargeable for maintenance of insane.

23. The Commissioner of Public Works and Mines shall have power to investigate and determine any disputes that may arise as to the county or district chargeable for the maintenance of a patient in such Hospital; and, before the Commissioner shall decide in the matter, he shall give reasonable notice to the counties or districts interested through their Clerks of the Peace, of the time and place of such investigation; and at such time and place shall be produced 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 counties, districts and parties interested.

Duty of sheriffs and justices to investigate cases of insanity.

24. 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 as witnesses 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; and when such insane person is found to have had his legal settlement in any other county, district or place, or if on investigation the Sheriff or justices consider it expedient to determine that to send such insane person to his place

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 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. CHAP. 36.

25. 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 Commissioner of Public Works and Mines, before he shall be admitted into the Hospital. Certificates of two practitioners required.

26. The expenses of all pauper lunatics, now or hereafter confined in the Hospital for the Insane, shall be chargeable on the respective counties or districts in which they shall have obtained legal settlements; and such expenses shall in each case be a county or district 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. Expenses of pauper lunatics.

27. In case the grand jury and sessions of any county or district which shall be liable for the expenses of lunatics confined in the Hospital shall refuse or neglect to assess such county or district therefor, 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 county or district 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 county or district rates, and in the same manner as amercements on counties for other purposes are now by law made; and the same when collected shall be paid into the Provincial Treasury. Grand jury and sessions refusing to assess county for expenses of lunatics, supreme court to amerce.

28. 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 Commissioner of Public Works and Mines 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 Commissioner is hereby authorized and empowered to collect the same by suit in his own name as an ordinary debt; and on the trial of such cause a certified account from the Commissioner of Public Works and Mines shall be sufficient proof of the amount of such charges and expenses. Refusal to pay expenses of maintenance.

## CHAP. 36.

Commissioner of public works and mines may alter rate of charges in certain cases.  
Extra charges.

In case estate of lunatic is exhausted.

Further regulations for maintenance.

Discharge of recovered patients.

Discharge on trial.

29. The Commissioner of Public Works and Mines in the case of patients now in the Hospital for the Insane on whose behalf admissions are sought, and where, in his judgment, there are circumstances justifying a departure from the ordinary rates, may make special agreements with the parties liable for the maintenance of such patients. Where a patient, from violence or otherwise, requires a special or extra attendance, such extra attendance shall be charged and paid for in the same manner as the ordinary charges.

30. When the funds or property of a private patient in the Nova Scotia Hospital for the Insane (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 Custos and Clerk of the Peace of the county or district in which such patient has a legal residence, on application made by the guardian or friend of such patient therefor, to investigate the case; and, if it is found that the patient is in such indigent circumstances, such Custos and Clerk of the Peace shall order that the expenses to be made a charge on the county or district, and such order shall be forwarded to the Commissioner of Public Works and Mines, who, on the receipt of the same, shall, from that date, charge the expenses of such patient to such county or district; 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 the expense can be borne by the patient, an agreement may be made whereby such part shall be paid to the surety of such county or district.

31. Whenever the real and personal estate of a lunatic or insane person, not being a pauper, or of the father, mother or other next of kin of such lunatic or insane person, is not more than sufficient to maintain the family of an insane person, the expenses of the maintenance of the patient 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 Commissioner of Public Works and Mines may on investigation order and direct.

32. The Commissioner of Public Works and Mines, 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 for the maintenance of such patient shall be duly notified of such discharge and the terms thereof. Provided that patients under criminal charges shall not be discharged only as by law directed. Patients who have been confined for more than six months under care in the Hospital and have so far recovered as to be capable of being cared for in a private family, may be discharged on

care of their relatives or friends, or, failing these, may be boarded out on such conditions and at such rate of payment as the Commissioner of Public Works and Mines 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.

33. Resident officers and other employes of the Hospital, while actually engaged as such, shall be exempt from service as jurors and as county, district and township officers, and from the performance of statute labor on the roads.

Officers of hospital exempted as jurors, &c.

34. In case the Commissioner of Public Works and Mines 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 Commissioner; 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.

Entry on lands to lay pipes &c., in connection with hospital.

35. 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.

Relations of patients to contribute towards maintenance.

36. The court of general sessions of the peace shall annually appoint not more than three committees of three justices of the peace in each county or district. 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. 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 Peace

Appointment of committees, their duties.

**CHAP. 36.** within such ten days, and shall also within the same period have filed with such Clerk of the Peace 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 Peace 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.

Amounts recovered by suit paid into county treasury.

37. The Clerk of the Peace, under the authority of the General Sessions, 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 County Treasury.

Power of committee.

38. 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.

Payment of committee.

39. 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 county charge.

Commissioner shall petition for lands required.

40. Whenever the Commissioner of Public Works and Mines shall require any or further lands for, and in connection with the Nova Scotia Hospital for the Insane, for any purpose whatever, he 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.

41. 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 such rule or order *nisi* upon all persons interested who are unknown to the commissioner 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 Commissioner of Public Works and Mines shall name one on his own behalf; and the Court or a Judge shall name the third arbitrator; and an order absolute shall thereupon pass appointing such arbitrators.

Order nisi published.

Arbitrators appointed.



42. 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.

CHAP. 36.

Proceedings  
and powers of  
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43. 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.

Award.

44. 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.

45. 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 Commissioner of Public Works and Mines for the time being and his successors in office.

Title to lands,  
how vested in  
commissioner.

46. 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

Disposal of  
amount of  
award.

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**CHAP. 36.** for the purpose of determining the respective the several parties to such lands.

**Title to hospital.** 47. The title to the property known as the Nova Scotia Hospital for the Insane and the lands belonging to the same is hereby confirmed and vested in the Commissioner of Public Works and Mines for the time being and his successors in office, in fee simple, for the purposes and uses of such Hospital.

**Interpretation of terms.** 48. In the construction of this Chapter, the term "Hospital" and "Hospital for the Insane" shall be understood to mean the "Nova Scotia Hospital for the Insane"; the term "district" to mean a sessional district; the term "county" to mean a sessional district; the term "Supreme Court" and "Court" to mean a Judge of the Supreme Court; unless such interpretation of the above terms is precluded by the context.

#### SCHEDULE A.

*Statement to be forwarded to the Medical Superintendent when application is made for the reception of a*

1. Name of patient (in full),
2. Where born,
3. Son (or daughter) of,
4. Residence, County of
5. Age last birthday.
6. State as to marriage,
7. Number and age of children,
8. Occupation, (or that of father or husband)
9. Natural disposition,
10. Habits in health,—as to temperance, etc.
11. Education,
12. Religion,
13. Age at first attack,
14. Insanity, how first manifested,
15. Number and duration of attacks,
16. Where under treatment, and when,
17. What relatives similarly affected,
18. Supposed cause, remote.
19. " " recent.
20. Duration of present attack,
21. State as to sleep,
22. Appetite for food,
23. State of bodily health,
24. Whether subject to Epilepsy,

25. Any faltering of speech, or loss of power, and CHAP. 36.  
when,  
26. Present habits and propensities,  
27. What delusions,  
28. Whether suicidal, (attempted or threatened) and  
how,  
29. If dangerous to others, how,  
30. Pecuniary circumstances, (or to whom chargeable,)  
31. Post-office address of nearest friend, and degree of  
relationship.  
32. Other particulars.

I Certify 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 last 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.

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.



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**Interpretation of terms.** 48. In the construction of this Chapter, the term "Hospital" and "Hospital for the Insane" shall be understood to mean the "Nova Scotia Hospital for the Insane"; the term "district" to mean a sessional district; if a county is divided for sessional purposes; the term "county" to mean "county" or such "sessional district"; the term "Supreme Court" and "Court" to mean a Judge of the Supreme Court; unless such interpretation of aforesaid terms is precluded by the context.

#### SCHEDULE A.

*Statement to be forwarded to the Medical Superintendent when application is made for the reception of a*

1. Name of patient (in full),
2. Where born,
3. Son (or daughter) of,
4. Residence, County of
5. Age last birthday.
6. State as to marriage,
7. Number and age of children,
8. Occupation, (or that of father or husband)
9. Natural disposition,
10. Habits in health,—as to temperance, etc.
11. Education,
12. Religion,
13. Age at first attack,
14. Insanity, how first manifested,
15. Number and duration of attacks,
16. Where under treatment, and when,
17. What relatives similarly affected,
18. Supposed cause, remote.
19. " " recent.
20. Duration of present attack,
21. State as to sleep,
22. Appetite for food,
23. State of bodily health,
24. Whether subject to Epilepsy,

25. Any faltering of speech, or loss of power, and CHAP. 36.  
when,
26. Present habits and propensities,
27. What delusions,
28. Whether suicidal, (attempted or threatened) and  
how,
29. If dangerous to others, how,
30. Pecuniary circumstances, (or to whom chargeable,)
31. Post-office address of nearest friend, and degree of  
relationship.
32. Other particulars.

I Certify 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 last 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.

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.

**CHAP. 36.** for the purpose of determining the respective the several parties to such lands.

**Title to hospital.** 47. The title to the property known as the N Hospital for the Insane and the lands belonging to the same is hereby confirmed and vested in the Commissioner of Public Works and Mines for the use of the said Hospital, and his successors in office, in fee simple, for the purposes and uses of such Hospital.

**Interpretation of terms.** 48. In the construction of this Chapter, the term "Hospital" and "Hospital for the Insane" shall be understood to mean the "Nova Scotia Hospital for the Insane"; the term "district" to mean a sessional district; the term "county" to mean a sessional district; the term "county" is divided for sessional purposes; the term "county" to mean "county" or such "sessional district"; the term "Supreme Court" and "Court" to mean a Justice of the Supreme Court; unless such interpretation of the said terms is precluded by the context.

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12. Religion,
13. Age at first attack,
14. Insanity, how first manifested,
15. Number and duration of attacks,
16. Where under treatment, and when,
17. What relatives similarly affected,
18. Supposed cause, remote.
19. " " recent.
20. Duration of present attack,
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22. Appetite for food,
23. State of bodily health,
24. Whether subject to Epilepsy,

25. Any faltering of speech, or loss of power, and CHAP. 36.  
when,
26. Present habits and propensities,
27. What delusions,
28. Whether suicidal, (attempted or threatened) and  
how,
29. If dangerous to others, how,
30. Pecuniary circumstances, (or to whom chargeable,)
31. Post-office address of nearest friend, and degree of  
relationship.
32. Other particulars.

I Certify 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 last 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.

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.

**CHAP. 36.** for the purpose of determining the respective rights of the several parties to such lands.

**Title to hospital.** 47. The title to the property known as the Nova Scotia Hospital for the Insane and the lands belonging to it attached to the same is hereby confirmed and vested in the Commissioner of Public Works and Mines for the time being and his successors in office, in fee simple, for the purposes and uses of such Hospital.

**Interpretation of terms.** 48. 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 sessional district within which the county is divided for sessional purposes; the term "county" to mean "county" or such "sessional district," "Supreme Court" and "Court" to mean a Judge of the Supreme Court; unless such interpretation of any of the terms is precluded by the context.

#### SCHEDULE A.

*Statement to be forwarded to the Medical Superintendent when application is made for the reception of a patient.*

1. Name of patient (in full),
2. Where born,
3. Son (or daughter) of,
4. Residence, County of
5. Age last birthday.
6. State as to marriage,
7. Number and age of children,
8. Occupation, (or that of father or husband,)
9. Natural disposition,
10. Habits in health,—as to temperance, etc.
11. Education,
12. Religion,
13. Age at first attack,
14. Insanity, how first manifested,
15. Number and duration of attacks,
16. Where under treatment, and when,
17. What relatives similarly affected,
18. Supposed cause, remote.
19. " " recent.
20. Duration of present attack,
21. State as to sleep,
22. Appetite for food,
23. State of bodily health,
24. Whether subject to Epilepsy,

25. Any faltering of speech, or loss of power, and CHAP. 36.  
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27. What delusions,
28. Whether suicidal, (attempted or threatened) and  
how,
29. If dangerous to others, how,
30. Pecuniary circumstances, (or to whom chargeable,)
31. Post-office address of nearest friend, and degree of  
relationship.
32. Other particulars.

I Certify 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 last 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.

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.

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## SCHEDULE B.

*Certificate.*

(a) Name in full. I, the undersigned,<sup>a</sup> ———, being<sup>b</sup> ——— and in  
 (b) Qualification. actual practice, hereby certify that I, on the — day of  
 (c) Locality. ———, 18 — at<sup>c</sup> ——— in the County of ———  
 (d) Name in full. separately from any other Medical Practitioner, personally  
 (e) Residence. examined<sup>d</sup> ——— of ———<sup>e</sup> ———<sup>f</sup> and that the said — is  
 (f) Occupation. 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.

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.

## SCHEDULE 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

\* The facts upon which (from personal observation) the opinion of insanity has been formed should always be specified.

Provincial Hospital for the Insane, and there deliver ——— CHAP. 37.  
 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 hand and seal at ——— in the  
 County of ——— this ——— day of ——— A. D. ———.

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## TITLE X.

### OF AGRICULTURE.

#### CHAPTER 37.

##### OF THE ENCOURAGEMENT OF AGRICULTURE.

1. The Governor in Council shall annually appoint a Appointment of central board of agriculture.  
 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."
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. Nominations for central board, how made.  
Name, &c., to be transmitted to secretary.
3. The Governor in Council shall select six, from among Governor in council to select members.  
 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.



**CHAP. 37.**

In case of neglect to nominate, &c., member to be appointed.

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 retire annually.

5. All members of the Board shall retire annually on the thirty-first day of January; but shall be eligible for re-appointment.

Vacancies in board, how filled.

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.

First meeting; when held.

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.

Election of officers.

General meeting to be held in Halifax.

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.

Special meetings may be called by secretary.

Members only to receive actual travelling expenses.

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.

Duties of board. To form county societies.

10. It shall be the duty of the 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 receive reports.

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 publish and distribute journal.

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 obtain new stock, grain, &c., for distribution.

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. CHAP. 37.

V. To hold every third year or oftener, should the Board deem it advisable, in some central and suitable locality, a general provincial exhibition of agricultural and horticultural products, animals and domestic manufactures; and to fix the time, articles of competition, and list of prizes to be awarded, and the regulations under which such exhibitions shall be held, of which due notice shall be given at least twelve months before the same shall take place; and in holding the same due regard shall be had to the just claims of the several counties.

To hold a general provincial exhibition at least every third year.

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 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 to appoint inspectors of societies.

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 six hundred dollars for the salaries of their officers, 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.

Board entitled to draw certain sum of money: application thereof and accounts.

13. Agricultural societies may be organized in any county 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.

Agricultural societies; how organized.

Subscription.

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 society shall be entitled to draw more than two hundred and fifty dollars in any one year.

When so organized entitled to draw from treasury double amount of subscriptions.

Not to exceed \$250 per annum.

**CHAP. 37.**

Government allowance; how apportioned.

15. In counties where more than one agricultural society exist 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 rateable 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.

Boundaries; how defined.

16. In case of any difficulties arising as to the boundaries of any such societies, the Central Board shall define the same.

Objects of agricultural societies.

17. 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.

Annual meetings of societies.

18. 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.

First officers to continue until successors appointed.

19. The officers appointed at the formation of such societies shall, until the election of their successors at the annual meeting, exercise all the powers vested in the societies by this Chapter.

Special meetings.

20. 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 bye-laws, &c.

21. The said officers and directors may at any such meeting make, alter and repeal bye-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.

22. 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 CHAP. 37.  
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.

23. If any society shall neglect to render such accounts Forfeiture for neglect.  
and report, it shall forfeit its claims to the provincial grant  
for the year next succeeding.

24. The county society, where but one exists in a County societies to hold annual show.  
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.

25. If the officers and directors of the agricultural Other system may be adopted in place of show  
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.

26. The provisions of this Chapter shall extend to all Application of chapter.  
agricultural societies at present in existence ; as well as  
to those hereafter to be established.

#### SCHEDULES.

##### 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 respec-  
tive names.

## CHAP. 38.

Names of Subscribers.	Sums Subscribed.
A. B.	\$
C. D.	

## B.

District number One shall include the City and County of Halifax.

District number Two shall include the counties of King's, Annapolis and Digby.

District number Three shall include the counties of Lunenburg, Queens, Shelburne and Yarmouth.

District number Four shall include the counties of Hants, Colchester and Cumberland.

District number Five shall include the counties of Antigonish and Guysborough.

District number Six shall include the counties of Breton, Richmond, Inverness and Victoria.

## CHAPTER 38.

## OF AGRICULTURAL AND LAND CORPORATIONS.

Agricultural corporations, how organized.

1. Whenever twenty persons or more shall raise a certain sum of 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, and shall have all the privileges and obligations in the Chapter "General Provisions respecting Corporations": but these 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 to the improvement of local agriculture.

Formation of an association for improvement of lands.

2. Whenever any British subjects desire to form an association for the purchase and improvement of certain lands on the lines of the trunk line of railroad from Montreal to Quebec, they may transmit the names of such persons, not less than twenty, as they wish to represent the

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:

CHAP. 38.

*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.

Privileges, liabilities and restrictions of the company.

*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.

*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.

- CHAP. 39.** 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 39.

### 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.
- Fees for membership.** 5. The fee for membership shall be two dollars a year.
- Club to keep record of transactions and prepare statistics.** 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.

7. The Bureau of Agriculture shall from time to time **CHAP. 39.**  
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 necessary. Bureau of Agriculture to prepare papers for clubs.
8. Any club formed under this Chapter, having funds 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. Prizes for essays, &c.
9. Such subjects shall be discussed at the different clubs, and the results arrived at shall be transmitted by the secretaries to the Bureau of Agriculture. Results of discussions transmitted to Bureau.
10. The Bureau of Agriculture shall annually epitomize the results arrived at in the various discussions before the clubs, and cause the same to be published for general sale and distribution. Publication of results of discussions.
11. The clubs shall meet semi-annually, or oftener. Their proceedings and debates shall be conducted under such rules and regulations as the Bureau of Agriculture may prescribe. Meetings. Rules and regulations.
12. Every club established under this Chapter, shall be 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. Clubs to be bodies corporate.
13. There shall be allowed, for the purposes of this 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. \$400 allowance.

#### SCHEDULE.

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 39 of the Revised Statutes.



## CHAP. 40.

## CHAPTER 40.

## 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 swearing shall be entered in the commissioners' book of record, which shall be evidence of the fact; 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 wears 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 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. CHAP. 40.

5. Commissioners may appoint from among the proprietors of such lands one or more overseers to assist them, who shall be sworn by one of the commissioners. Overseers may be appointed; how sworn.

6. Commissioners shall in ordinary cases cause three days notice, exclusive of Sundays, to be given to the proprietors of land, or to their known agents, where they reside within ten miles (or if in the County of Kings within six miles) of the place where the labor is required to be done, to attend and furnish labor and materials; but in cases 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 the fourth section as to cases of neglect. Notice to be given proprietors.

7. The commissioners so chosen may assess the owners or occupiers of such lands for any expenses incurred by them, or their predecessors whose accounts remain unsettled, for dykes, weirs, drains, aboiteaux, 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. Assessment to be made, and for what purpose.

8. Where any rate shall exceed one dollar and fifty cents an acre on the whole quantity of rateable 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 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. Rates exceeding one dollar and fifty cents per acre, how assessed.

9. The commissioners for the new or Wickwire dyke 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 rateable land, without Commissioners of Wickwire dyke may assess.

**CHAP. 40.** 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 draining.

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 rateable 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. Private set off disallowed.

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.

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, 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.

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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.

Action by owners, &c., against commissioners for work, &c.; when sustainable.

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 required 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.

Damage for sods or soil; how assessed.

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.

Powers of commissioners.

- CHAP. 40.** 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.
- Clerk to keep record.
22. Whenever by the making or repairing of a breakwater by direction of a commissioner of sewers, salt marsh lying outside the same shall be benefitted thereby, the same shall be taxed and assessed towards the expense of the breakwater in proportion to the benefit derived.
- Salt marsh, when taxed.
23. Whenever in the draining of any swamp or meadow land a part shall be benefitted, the proportion of the expense shall be assessed on that part only.
- Expense assessed on parts benefitted.
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.
- Competency of clerks and other officers as witnesses.
25. No commissioner of sewers shall hold the office of clerk or collector.
- Commissioner shall not be clerk.
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.
- Plans, when necessary, how obtained.
27. Where any lands enclosed by dykes shall, by other 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
- Outer dykes protecting lands enclosed by inner dykes; how kept in repair.

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.

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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 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.

Dykes injured by pasturage or roads; how repaired.

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 forms 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,

Applications for drainage; how made; duty of commissioner thereon.

**CHAP. 40.** 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 benefitted 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 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.

Flowing dyked lands.

§ 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 commissioner 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

Proviso.

never it shall appear to any commissioner of sewers CHAP. 40.  
 ining such flowed lands that such division dyke is  
 efficient, and such lands adjoining are endangered  
 eby, it shall be lawful for such commissioner to repair  
 a division dyke, and collect the expenses thereof from  
 proprietors of land so dyked out.

l. The expenses of repairing the dyke cut for such Expenses, how  
borne.  
 ing shall be borne by the proprietors of the land so  
 ed out and flowed.

i. If not less than one-third in interest of the pro- Notice by pro-  
prietors dissatis-  
fied with rate.  
 g notified thereof give notice to the commissioner or  
 missioners in writing, signed by themselves or their  
 ective agents, that they are dissatisfied with the rate,

the commissioner or commissioners shall summon the  
 ers or occupiers of such lands or their known agents  
 uch of them as shall reside within ten miles (or in the  
 ity of Kings six miles) of the work, to meet at a cer-  
 place and on a certain day, being at least three days,  
 usive of Sunday, after service of such summons; Assessors to be  
chosen, whose  
decision shall be  
final.  
 n a majority in interest of those present shall elect  
 less than three or more than five disinterested

ons as assessors; and the assessors or a major-  
 of them, having been first sworn into office in the  
 way as the clerk, with such commissioner or com-  
 ioners, shall assess such owners or occupiers for the  
 nses incurred, including a sum not exceeding one  
 r and fifty cents a day for each assessor while actually  
 oyed, and the decision of the assessors or any three of  
 n shall be final.

k. In case the proprietors neglect to meet at the time Mode of proce-  
dure where last  
section not com-  
plied with.  
 place appointed or to appoint assessors, or in case the  
 ssors or a majority of them neglect to perform the  
 es imposed upon them; the commissioner or commis-  
 ers shall forthwith submit and refer such rate to three

r disinterested commissioners of sewers of the county  
 ownship within which the lands lie, by name; who shall  
 hwith revise, and, if they see fit, amend such rate, and  
 decision of the revising commissioners, or any two of  
 a, shall be final.

l. When the land of any proprietor within such marsh, Damages to  
lands of persons  
not applicants;  
how valued and  
assessed.  
 up or meadow land, other than that of the applicant,  
 have been injured by such drainage, or other mea-  
 s ordered, the damage shall be valued, assessed, and  
 in the same manner as directed for the expenses  
 rred in such drainage.

m. When any dyked marshes are owned by two per- Cases of two  
proprietors,  
neither owning  
two-thirds, how  
provided for.  
 in such proportions that neither is interested to the  
 nt of two-thirds, either party may require one or more



**CHAP. 40.** 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 specified.

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.

Commissioner, how far liable for predecessor's acts.

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.

Dyke lands alone to be assessed.

44. No lands except dyke lands, properly so called, shall be rated or assessed for any dyke rate for any purpose under this Chapter.

Persons widening drains, &c., liable for damages.

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 Peace a sufficient bond, with not less than two sureties to be approved by such clerk, to pay for all damages arising from such contempla-

ted 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.

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.

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 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.

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Drainage through dyke lands under supervision of commissioners.

Two or more commissioners appointed by Governor in Council, with two or more appointed by New Brunswick to form board, called Missequash Commissioners of Sewers.

Their powers and privileges.

## CHAPTER 41.

### OF COMMONS.

1. The sessions shall make regulations respecting commons in the several townships and enforce the same by penalties not exceeding eight dollars; and they shall have the general management of the commons and the control of the supervisors in the discharge of their duties in relation thereto.

Sessions to have the management of commons.

2. Nothing in this Chapter contained shall extend to the City of Halifax nor to any common, regulated by a special act remaining unrepealed.

Certain commons exempted.

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## CHAPTER 42.

## 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.

Fine for non-compliance.

4. If any person shall not comply with the regulations, he shall forfeit a sum not exceeding two dollars.

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.

Brands to be entered in clerk's book; fee therefor.

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.

Fine for a second entry of same mark.

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 unauthorised or counterfeit brand.

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. CHAP. 42.

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 duty.

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.

Instructions as to assessments for various purposes.

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.

Section 12 not to extend to Grand Prairie.

Power of committee of such dykes.

## CHAP. 43.

Collectors appointed by committee; their duty.

Allowance to committee to be included in assessment.

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.

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.

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## TITLE XI.

### OF HIGHWAYS, BRIDGES, PUBLIC LANDINGS FERRIES AND RAILROADS.

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#### CHAPTER 43.

##### OF THE LAYING OUT AND MANAGEMENT OF CERTAIN GREAT ROADS.

Roads to which this chapter applies.

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 Peters, 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 Peters, 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.

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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 general sessions of the peace for the county or district, or a special sessions, and also a statement of expenses and charges attending the same; and if the sessions 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 county or district within the limits of which such damages have been incurred.

Private lands when crossed by agreement.

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

Mode of procedure when no agreement can be made.

**CHAP. 43.** of the road; which appraisalment shall be reduced to writing, and accompanied by a plan and admeasurement of the road, shall be returned to the Clerk of the Peace, to be laid before a general or special sessions; and further proceedings shall be had thereon in conformity with the provisions of the last preceding section.

Commissioner may proceed immediately upon agreement or appraisalment.

4. After any agreement shall have been made or an appraisalment had under the second or third sections, the commissioner may enter upon the lands and proceed with the road, leaving the compensation to be paid to the proprietor to be finally determined in the manner in such sections respectively directed.

Fences to be made before compensation.

5. No payment for fencing shall be made under this Chapter until the proprietors of the land shall have made 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 without his assent; no compensation for such fencing shall be made unless claimed within one year after the road shall have been opened.

Damages from treasury restricted to roads in first section.

6. No money shall be drawn from the provincial treasury for damages on the completion or running out of a new road or alteration of any old one, other than on the roads specified in this Chapter.

Width of road.

7. The road shall be at least sixty-six feet in width.

Site of road when held as surrendered.

8. When any road has been or shall hereafter be made 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 as much of the land through which the new road passes to the breadth of sixty-six feet.

What roads under charge of governor in council.

9. The Governor in Council may assume the charge and management of the undermentioned great roads, that is to say:

Great eastern road.

*First.*—The great road East from Halifax to Sydney Cape Breton, passing through the counties of Halifax, Colchester, Pictou, Sydney, Inverness, Richmond and Cape Breton.

Road from Truro to frontier of New Brunswick.

*Second.*—The great road North, from Truro to the frontier of New Brunswick.

Eastern shore road.

*Third.*—The eastern shore road, from Dartmouth to Ship Harbor.

New Guysboro' road.

*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. CHAP. 43.  
Southern shore.

*Sixth.*—The great western road from the city of Halifax to Avon bridge in the county of Hants. Great western road.

*Seventh.*—The road from Liverpool through Middlefield, South Brookfield, Harmony, Kempt and Maitland, to Annapolis. Road from Liverpool to Annapolis.

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 to lay out roads and appoint supervisors.

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. Supervisors, their authority.

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. To expend money.  
Proviso.

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. Mode of expenditure.

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. Supervisors to furnish report.

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. To be governed by orders from governor, approved by legislature.

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. Remuneration of supervisors.



**CHAP. 44.** 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.

Road work to be done by contract or day's labor.

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## CHAPTER 44.

### OF LAYING OUT ROADS OTHER THAN CERTAIN GREAT ROADS.

**Roads to which chapter applies.** 1. The provisions of this Chapter shall be applicable to roads other than those mentioned in the last preceding Chapter.

**Mode of laying out new or altering old roads.** 2. Twenty or more freeholders of any county or district may petition the sessions for the making of a new road or the alteration of an old one; and the sessions, 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.

**Persons appointed to report to sessions.** 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 sessions; 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 Peace, with a full return of proceedings thereon, to be laid before the sessions.

**To make agreement with proprietors.**

**To annex plan.**

**When no agreement made, appraisers to be appointed and sworn.** 4. When no agreement shall be made, one appraiser shall be appointed by the Custos 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 Peace, accompanied by a

plan and admeasurement of the roads, to be laid before CHAP. 44.  
the sessions.

5. If the proprietor of the land be absent from the Province no notice need be served; and, if he be absent 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 Custos is authorized to appoint in either case an appraiser for the absent proprietor.

Notice to absent proprietors.

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 Custos shall appoint one arbitrator, whose acts shall be binding on such proprietors touching such damages as if they had joined in such appointment.

When more than one proprietor, appraisers how appointed.

7. The Clerk of the Peace 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 sessions.

Clerk of peace to post notices of new roads or alterations.

8. At the next general sessions or any special sessions called for that purpose, the proceedings shall be considered, and objections, if any, heard thereto; and the sessions shall then confirm or disallow the proceedings, and if confirmed, they shall be recorded.

Sessions to confirm or disallow proceedings.

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.

Appraisers to apportion old roads.

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 sessions may confirm or disallow the same.

New roads, &c., width of.

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 sessions under the law in reference to the closing of old roads.

Land apportioned property in fee of person to whom allotted.

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Damages, &c.,  
county charge.  
Compensation  
to proprietors,  
when made.

Sites of roads  
when held as  
unrendered.

Open and pent  
roads, how laid  
out.

Damages to be a  
county or district  
charge.

Gates on private  
ways by order of  
sessions.

Penalty for  
breach of regula-  
tions.

Fences to be  
made before  
compensation.

Public landings,  
making of.

Quantity of  
land for.

Justices in-  
eligible for ap-  
pointment.

12. The damages appraised and expenses incurred form a county charge.

13. In case of confirmation the proprietors of the shall be entitled to receive compensation for fencing making oath that the fence has been put up at least the full width of the road from the centre thereof, laid out; such oath being in other respects conformal the provisions of this Chapter.

14. Where roads have been, or shall hereafter altered or made without any demand for compensation made by proprietors of land through which the new runs within one year from the opening thereof, such a surrender to Her Majesty forever for a public highway of all the land through which the new road passes the width to which the said road was originally laid out.

15. The sessions may order the laying out of a private way either open or pent in the same manner as is prescribed; except that the application for such road not be by twenty freeholders; and the damages in case, or in any case where they have been hit allowed and have not been paid by the poor district through which the road runs, shall form a county or district charge or shall be borne by the applicants, as the court in commission may order.

16. The sessions 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 not less than one dollar nor more than eight dollars.

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 full width from the centre of the road, and encloses in or in part some of his lands, and that the same shall not be removed without his assent.

18. A public landing upon the shore of any navigable water may be established or altered by the same authority, 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 provisions may be applicable, the provisions of this Chapter shall extend to such landings and to roads connecting the same with the Queen's highway.

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 the landing, not to exceed in all one acre.

20. No justice of the peace shall be appointed under the second section of this Chapter.

## CHAP. 45.

## CHAPTER 45.

## OF THE EXPENDITURE OF MONEYS ON ROADS.

1. The Governor in Council shall annually before the fifteenth day of May, and thereafter in cases of necessity, appoint commissioners for superintending the expenditure of moneys granted for the making and repairing of roads and bridges, and may remove them at pleasure and appoint others in their place; and the Provincial Secretary shall, within twenty days after the appointments, have the commissions and the bonds to be entered into by the commissioners, where required, transmitted ready for execution.

Commissioners  
how appointed.

2. The commissioners, when the amount to be expended shall exceed eighty dollars, shall, before entering upon the duties of office, give security by bond, with two sureties to the satisfaction of two justices of the peace for the county, in double the amount of the sum to be by them expended, faithfully to lay out and account for the money according to law; and the justices shall certify their approbation and the sufficiency of the sureties upon the back of the bond.

Commissioners  
bonds where  
sums over  
eighty dollars.

3. The Treasurer shall retain in his hands, where the amount shall not exceed eighty dollars, the whole, and in other cases two-thirds, of the amount to be expended, until the whole sum shall have been duly laid out.

Sums under  
eighty dollars  
not drawn till  
expended; over  
that amount  
one-third only.

4. The moneys shall be expended, after sale by auction or by tender and contract, unless it shall appear to the commissioner that the same or parts thereof cannot be so advantageously expended in that manner as by days' work, in which case the moneys or parts thereof required may be expended by days' work: but the commissioner who shall expend any moneys by days' work shall render an account thereof in writing under oath to the Provincial Secretary, the oath to be administered by a justice of the peace without fee, and to be, as nearly as may be, as follows:

Money how to  
be expended;  
accounts; form  
of oath, &c.

"I, A. B., 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 granted: that I procured the best labor in my power to procure, and at the lowest rate of wages; and that the days' work charged in the account has been, in my opinion, more advantageous to the public than if the expenditure of the sum had been made by public sale or by tender and contract.

(Signed) A. B., commissioner.  
Sworn to at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18—, before  
me, (Signed) C. D., J. P."

## CHAP. 45.

Contracts how to be entered into, and when to be fulfilled.

5. Before entering into any contract the commissioner shall give notice thereof by advertisement posted up for ten days previously in the places usual for public notices in the county; and he shall receive sufficient security from the contractor for the performance of the contract within the time specified; and he shall, where the whole amount to be expended exceeds eighty dollars, pay the contractor as the work shall be proceeded in moneys on account, until one-third of the amount of the contract shall have been paid; but shall not pay the remaining two-thirds until the work shall be completed agreeably to contract. Contracts shall be made to expire on or before the last day of September in the year in which they are entered into; except those for the opening of new roads and the improving such as have not been used for wheel carriages, and for erecting bridges, which may be extended until the thirty-first day of October; and the contracts shall be, as nearly as may be, in the following form, and shall be binding on the parties thereto:

Form

"Articles of agreement made this — day of —, one thousand eight hundred and —, between A. B., commissioner of — of the one part, and C. D. of — and E. F. and G. H. of —, as sureties of the said C. D., of the other part, as follows, viz.: the said C. D., E. F., and G. H. agree with the said A. B. that the said C. D. will, on or before the — day of — next, in a good and workmanlike manner, well and sufficiently — to the satisfaction of the said A. B.; and the said A. B. agrees with the said C. D. that he, the said A. B., will pay unto the said C. D. the sum of — in manner following, that is to say: one-third thereof from time to time as the work shall be proceeded in, and the remaining two-thirds when the work shall be completed according to this contract."

Contracts in cases under eighty dollars.

6. Where the sum to be expended on any particular work shall not exceed eighty dollars, it shall not be imperative on the commissioner to require the contractor to enter into the formal contract hereinbefore prescribed; but it shall be sufficient to make a memorandum in writing, which shall be binding upon the contractor and his surety for the due performance of the contract, and upon the commissioner for the payment of the moneys agreed on. And the memorandum shall be as nearly as may be in the words following:

Form.

A. B., of —, hereby agrees with C. D., of —, to perform the following work, viz.: — and to complete the same in a good and workmanlike manner, on or before the — day of — next. For the due performance whereof E. F., of —, hereby becomes surety for the

said A. B. And the said C. D., as commissioner for the CHAP. 45.  
 performance of the work, hereby agrees with the said A.  
 B. on the due performance of his contract, to the satisfac-  
 tion of the said C. D., to pay him the sum of — therefor.

Dated this — day of —, 18—.

(Signed)

A. B.  
 C. D.  
 E. F.

7. Commissioners expending any moneys by contract shall make return under oath to the Provincial Secretary's office, stating the amount of the different contracts entered into by them; the oath to be administered by a justice of the peace without fee, and to be as nearly as may be as follows:

Return of com-  
missioner in  
cases of moneys  
expended by  
contract.

"I, A. B., do swear that the contract referred to in the annexed [*or foregoing*] account, has been faithfully executed, and that the money voted for the work has been laid out properly, and to my entire satisfaction.

Oath

(Signed)

A. B.

Sworn to at — this — day of —, 18—, before  
 me. (Signed) C. D., J. P."

And they shall also make return of the contracts or copies thereof when exceeding forty dollars.

8. If two justices of the peace for the county shall certify to the Governor that the work upon any road or bridge has not been faithfully performed, or that any contract has not been faithfully executed, the commissioner shall not draw the money entrusted to him to expend, or the remaining two-thirds thereof, as the case may be; but the general sessions for the county, or a special sessions to be called for the purpose, shall inquire into the expenditure of the money, the performance of the labor, and the execution of the contract where one has been entered into, notwithstanding the same may have been performed to the satisfaction of the commissioner, and shall certify to the Governor the particulars of the expenditure and the sum which, in their judgment, ought to be paid to the commissioner; which sum only the commissioner shall receive from the treasury.

Two justices  
may certify  
where work not  
faithfully per-  
formed; pro-  
ceedings there-  
upon.

9. Where it may be necessary or expedient to procure materials for the repair of the roads, the commissioner, if from the absence or obstinacy 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 lands, and therefrom, for the repair of the road, dig up and carry away stones and gravel, and cut down and carry away trees, bushes, logs, poles and brush wood; and the damage done thereby shall be appraised by three indifferent freeholders, nominated by the nearest justice of the peace for

Materials how  
provided; where  
owner of soil  
absent or obsti-  
nate.

**CHAP. 45.** the purpose; and the sum appraised shall be paid by the commissioners to the owner of the soil, if demanded, within three months after.

Number of laborers; wages how paid.

10. There shall not be employed in any one day more than forty laborers to work under one commissioner; and the wages of laborers shall be paid in cash only.

Foreman may be appointed.

11. For every ten laborers daily employed by one commissioner, the commissioner 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 laborers generally in the absence of the commissioner.

Commissioners' per centage and pay; pay of men and teams; working hours.

12. Commissioners shall be entitled to charge and retain after the rate of five per cent. on the moneys to be by them expended, and also one dollar and twenty-five cents per day for every day they shall have been actually employed superintending day laborers, and shall have at least ten laborers at work throughout the day. No foreman or laborer shall be paid more than one dollar and twenty-five cents per day. No owner of a team, consisting of a cart, driver and two horses or four oxen, shall be paid more than three dollars per day; and of a team consisting of a cart, driver and one horse or two oxen, more than two dollars per day. No owner of a plough shall receive more than forty cents per day unless under special circumstances set forth in the affidavit to the account, the day to consist of at least ten working hours; and the foregoing wages to be paid only where suitable day laborers, teams and drivers, cannot be had at lower rates for cash.

When employed on breakwaters, &c.

13. Laborers employed in erecting breakwaters and in clearing out rivers, or in other public works of a similar nature, shall be entitled to receive a sum not exceeding one dollar and fifty cents per day for their labor while so engaged.

Encroachments and encumbrances, how provided against.

14. The commissioners shall examine the breadth 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 shall make an accurate return of the breadth of the roads and of encumbrances thereon to the Supreme Court or sessions for the county at its next sitting after their appointment, in order that such proceedings may 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.

15. Except in cases of emergency or in the opening of new roads the commissioners shall complete their work before the twentieth day of August in each year.

CHAP. 46.  
Work completed  
20th August.

## CHAPTER 46.

### OF HIGHWAY LABOR.

1. The districts as now established for the performance of statute labor on the highways are confirmed; and the sessions may erect new districts or alter the limits of those now established.

Districts confirmed; sessions to make new.

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.

Persons liable to two days' work.

3. All males whose names are included in the assessment roll and assessed for any sum over one hundred dollars, shall be liable to perform in addition according to the following scale:—

Scale of additional work.

One hundred to two hundred dollars, one day;  
Two hundred to four hundred dollars, three days;  
Four hundred to six hundred dollars, four days;  
Six hundred to one thousand dollars, five days;

One thousand to one thousand four hundred dollars, six days;

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.

4. Males over sixty years of age 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 excess; and, in computing the number

Males over sixty years.



**CHAP. 46.** of days to be performed, the amount shall be calculated by the scale, beginning at one thousand dollars and proceeding thereon to the amount contained in the roll.

**Persons exempt.** 5. Persons holding commissions in the military or civil department of the army, firemen and enginemen, clergymen and ordained ministers, 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.

**Property exempt.** 6. Property over one thousand dollars of assessed value, in the hands of executors, administrators, trustees, agents, guardians and women, shall be liable in respect to the excess at the same rate of taxation as other property.

**Surveyor may require teams.** 7. 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.

**Labor to be done in eight days if required.** 8. The surveyor may require the whole amount of statute labor imposed under this Chapter to be performed within a period of eight days.

**No. of hours in each day.** 9. A day when mentioned in this Chapter shall be eight working hours.

**Time of performing labor.** 10. The surveyors and commissioners shall cause to be 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, season and harvest excepted, by giving them six days' notice of the time and place where they are to be employed, and of the tools to be brought for such labor, the notice to be given either by the surveyors or commissioners or by any person by them authorized and to be left 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.

**Absentees.** 11. Every person liable to perform labor under this 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 commutation therefor as hereinafter prescribed, or shall not adduce satisfactory proof of his having performed or com-

d or otherwise paid for his statute labor in some other  
 ct, shall on his return to his usual place of abode  
 fifty cents for every day's labor to which he was

CHAP. 46.

In case a highway shall become obstructed or a  
 e broken down or carried away or a road rendered  
 sable by any unforeseen cause, except by the falling  
 ifting of snow, the surveyors of highways or com-  
 oners of streets, under the direction of two justices  
 e peace, shall notify such persons within the district  
 y be deemed necessary to attend immediately, either  
 emselves or with their teams, as may be considered  
 able, to remove the obstructions or make such repairs  
 the highway or bridge as may by the justices be con-  
 ed absolutely necessary to render the same passable ;  
 very person so attending and laboring shall be allowed  
 e labor by a reduction of the like number of days  
 the labor to be by him performed under this Chapter,  
 r for that or for the subsequent year, as the same may  
 r before or after the time limited for the performance  
 ghway labor in the district, in the same manner and to  
 ame extent as if the labor had been performed at the  
 l time; and every person duly notified to attend and  
 under this section who shall neglect to do so shall be  
 o the same forfeitures as if he had neglected to  
 id and labor at the regular time; such forfeiture for  
 day when paid to reckon for one day's labor of such  
 on under this Chapter.

Obstructions  
how removed.

. It shall be lawful for any person liable to perform  
 hereunder to commute his labor on the payment to  
 overseer or commissioners on or before the day ap-  
 pointed for the performance of such labor, of fifty cents  
 each day's labor which he is liable to perform ; and the  
 seer or commissioners shall receive such commutation  
 y time within three days after the day appointed for  
 commencement of the labor ; but the overseer or com-  
 ioners may in their discretion accept labor or the com-  
 ation within the period last named.

Commutation.

l. Every person duly notified, who shall not labor  
 eably to the notice, or tender the commutation there-  
 is directed in the last section, shall forfeit sixty cents  
 every day's labor to be by him performed.

Forfeiture.

i. No person residing upon an island whereon there  
 any highways upon which the performance of labor  
 er this Chapter may be enforced shall be obliged to  
 k or furnish any labor hereunder upon the main land  
 e liable to any penalty for not so doing ; but every  
 on so residing upon an island and liable to perform  
 r under this Chapter, shall perform the same upon

Residents on  
islands.

**CHAP. 46.** 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.

**Sessions may locate work.** 16. The general sessions 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.** 17. The surveyor of any highway, 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 Peace, in order that the same may be recorded.

**Breaking roads in winter.** 18. 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.

**Forfeiture.**  
**Proviso.** 19. Every surveyor and commissioner of streets shall annually on or before the first day of the sessions, 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 Peace 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 Peace, to be expended upon the roads under the direction of the sessions.

**Return of surveyor and commissioners.** 20. 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.

**When owner of property resides out of district.** 21. The general or a special sessions called for the purpose, 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 Peace, 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

**Proceedings to make up roll.** 21. The general or a special sessions called for the purpose, 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 Peace, 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 sessions shall make such regulations to secure the due notification of the surveyors as to them may seem proper; and two days' labor shall be remitted to the person with whom the assessment roll is so lodged. CHAP. 46.

22. 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 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. Expenditure of moneys.

23. 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. By day's work to be attested.

24. 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. Penalty on surveyor for neglect.

25. 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. How recovered and applied.

26. 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. Penalty.

27. 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. Pay of surveyors.

**CHAP. 46.** 28. Returns of statute labor shall be made in the form in the Schedule hereto annexed.

Form of return.  
General inspectors.

29. The general sessions in each county or district may once in each year appoint one or more general inspectors of statute labor, whose salary and duties shall be fixed by such sessions.

Blank forms how furnished.

30. 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 peace on application made for that purpose.

Clerk of peace to prosecute surveyors.

31. It shall be the duty of the Clerk of the Peace to prosecute delinquent surveyors for neglect or breach of duty under sections twenty-three and twenty-four of this Chapter.

SCHEDULE.

County 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 47.

## CHAPTER 47.

## 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. Fine how levied.
3. The sessions may make regulations for preserving the side paths of any public highway, except within the City of Halifax, 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 paths preserved by order of sessions.
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. Penalty.
6. All encumbrances found on the ditches of the roads shall be forfeited, and may be disposed of by the surveyor of highways without any legal proceedings; and the proceeds shall be applied by the surveyor to the repair of the road. Encumbrances forfeited.
7. No person shall ride or drive any horse at full speed or in a disorderly manner in the public street or highway Disorderly driving penalty. &c.

- CHAP. 48.** 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.
- Bridges protected.** 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.
- Carriages on runners driven with bells.** 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.
- Width of carriages on runners.** 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 loads of hay.** 11. No load of hay or straw of greater width than fourteen feet shall be drawn on any highway.
- Unloaded sleds.** 12. No unloaded sled shall have pointed stakes standing, or frames or projecting pieces outside.
- Centre of highway to be left on the right.** 13. Persons in driving upon the highway shall leave the centre of the road on their right hand.
- Persons passing in carriages to leave space on left.** 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.
- Carriages standing.** 15. Carriages standing on the highway shall not be nearer the centre of the road than eighteen inches and on the proper side thereof.
- Fines for offences, when to be prosecuted.** 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.
- How applied.** 17. Forfeitures under this Chapter not specifically appropriated shall be applied under the directions of the sessions to the repair of roads and bridges.

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## CHAPTER 48.

### OF CLOSING ROADS.

- Old roads may be closed by sessions 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 sessions 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 sessions 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 Peace 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 order as shall seem right therein. The order of the sessions, if not appealed from, and the order of the Supreme Court in case of appeal, to be conclusive.

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 sessions. Parties who may be heard; appeal allowed.

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. Where owner of adjoining lands dead, who to be considered proprietor.

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## CHAPTER 49.

### OF COMMISSIONERS OF STREETS.

1. The jurisdiction of the commissioners shall be confined to the limits following, that is to say: Jurisdiction of commissioners defined.

#### *For Maitland.*

From Richard Anthony's east line to the Five Mile River and along the Kennetcook road to Rocky Brook. Maitland.

#### *For Windsor.*

To such parts of the Town as extend from Smith's Island to the northward and eastward as far as the bridge over the Trecothick Creek, on the main road leading out of the Town of Windsor, as far as the Church, and on the southward and westward to Falmouth Ferry. Windsor.



CHAP. 49.*For Bridgetown.*

**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.*

**Annapolis.** 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.*

**Digby.** To all the roads and streets which are comprehended within a circuit of two miles extending from the courthouse in the Town of Digby in every direction.

*For Liverpool.*

**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.

*For Antigonishe.*

**Antigonishe.** To the Town of Antigonishe within the following limits: On the Hollowell Grant Road to the West line of the land of Joseph Dexter; on the Harbor Road including land from road to Angus McEachran's eastern line; on the St. Andrew's Road to South end of bridge at McAmes'; on the Glen Road to southern end of Wilkie's Bridge; on Mars Hope Road to T. S. Lindsay's West line; on North Grant Road to the North end of a bridge known as Lachy Bridge; and on Church Street to H. P. Hill's South line and to include new streets opened up.

## CHAP. 49.

*For Milton.*

Beginning on the eastern side of Liverpool River at a <sup>Milton.</sup>  
 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 ex- <sup>Port Medway.</sup>  
 tending back from the river one mile.

*For Tusket Village.*

From the court house in Tusket, to extend one mile in <sup>Tusket.</sup>  
 every direction.

*For Lunenburg.*

Within such parts of the town as extend eastward to the <sup>Lunenburg.</sup>  
 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.

Chester.

*For Dartmouth.*

Within the distance of one mile, measured in a south- <sup>Dartmouth.</sup>  
 wardly, eastwardly and northwardly direction, from the  
 public landing or steamboat company's wharf.

*For Pictou.*

On the West by the West side of the Town Gut, on the <sup>Pictou.</sup>  
 East by the West side line of the farm lately occupied by  
 the late David Lowden, on the South by the harbor of  
 Pictou, and on the North by the rear line of the original  
 lots laid out and fronting the harbor.

*For New Glasgow.*

To the limits of School Section Number One in the <sup>New Glasgow.</sup>  
 Southern district of the County of Pictou.

CHAP. 49.*For Guysborough.*

Guysborough. To the town plot.

*For Sydney.*

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 Copitt's Mill Brook, and thence to be bounded by the brook until it meets the waters of Malony's Creek.

*For the North Bar.*

North Bar. To the North Bar in the County of Cape Breton, as laid off by the Sessions.

*For Sydney Mines.*

Sydney Mines. To Sydney Mines in the County of Cape Breton, as set off and defined by the Sessions.

*For Port Hawkesbury.*

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.*

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 Truro.*

Truro. To the village of Truro, in the County of Colchester, within the following limits: bounded North by the line between Truro and Onslow; West by a line at right angles thereto, passing by the Presbyterian meeting house, so as to include the road from the Presbyterian meeting house to the board landing; South by a line parallel with the first line, and to run one mile South of the court house, and East by a line parallel with the West line, and to run along the East line of the lane called David Fulton's Lane, so as to include William Eaton's Lane; the East boundary line to extend northwardly from the corner of said lane to the Onslow town line.

## CHAP. 49.

*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. New Caledonia.

2. The subsequent provisions of this Chapter shall extend to the City of Halifax and the commissioners of streets therein, unless where specifically excepted. Sections applicable to the city of Halifax.

3. 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.

4. 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. Duties of commissioners.

5. 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 sessions which shall happen first after the time limited for the performance of statute labor, render under their hands to the Clerk of the Peace, to be laid before the sessions, 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 sessions. Accounts of commissioners.

6. 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 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 Further duties of commissioners.

**CHAP. 49.** 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 proper.

Fine for neglecting to keep gutters and streets in front of premises clean.

7. 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.

Persons building may occupy streets for material.

8. 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.

Wells and pumps, how provided.

9. 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.

Nuisances and encroachments liable to removal.

10. 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.

Line of street, how protected in case of new buildings.

11. 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 may remove the same or take the steps by law allowed in cases of common nuisances. CHAP. 49.

12. 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 Peace; 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.

Lines settled by jury in case of dispute; return, how confirmed.

13. 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.

Soil of streets broken only by permission in writing; fine for offences.

14. 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.

Fine for riding or driving on side path.

## CHAP. 49.

Annapolis river  
bridge under  
charge of com-  
missioners.

15. 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.

Sessions may set  
off districts.

16. The courts of general sessions are hereby empowered to set off by limits districts within their counties, and from time to time to alter the same, and to declare what number of commissioners of streets shall be appointed for each district in manner following: the grand jury shall recommend double the number being residents in such districts, of whom the sessions shall select one-half, one of whom shall annually retire in the order in which his name stands on the recommendation list handed in by the grand jury; and, upon such retirement, two other residents shall be recommended in like manner, one of whom shall be selected by the sessions to supply the vacancy created by such retirement; and in case of the death, continued absence, or refusal to serve of any such commissioner, a special sessions may fill up such vacancy, subject to the confirmation of the grand jury and the general sessions at their next meeting; and any person appointed under this section who shall neglect his duty, or after notice of such appointment shall refuse or neglect to be sworn into office within fourteen days, shall forfeit and pay a fine of eight dollars.

Appointment of  
commissioners.

Vacancies, how  
filled.

Bridges over  
rivers, &c., divi-  
ding townships,  
&c.

17. The sessions 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.

Provisions of this  
chapter to apply.

18. Upon being sworn to the faithful discharge of their duty, all the provisions of this Chapter shall apply to the Commissioners to be appointed under the sixteenth section.

Vacancies, how  
filled up.

19. When vacancies of commissioners shall occur in the several districts or villages in the first section named, they shall be filled up and supplied under the sixteenth section.

Powers of com-  
missioners.

20. 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.

Money and fines,  
how recovered  
and applied.

21. Moneys and forfeitures payable under the foregoing sections may be sued for and recovered by the commissioners in their name of office as commissioners of

for the place for which they have been appointed, **CHAP. 50.**  
 the individual names of them or any of them in the  
 manner and with the like costs as if they were  
 the debts, and when recovered shall be applied by the  
 commissioners to the repair of the streets or other the  
 uses of this Chapter.

No action shall be commenced against the com- Notice of action  
against commis-  
sioners; limita-  
tion.  
 mioners or persons acting under them until twenty  
 notice in writing shall be given to one or more of  
 commissioners, nor after six months next after the act  
 omitted for which the action shall be brought; and  
 by such action shall be laid and tried in the county  
 in which the commissioners have jurisdiction.

The word "commissioners," when used in this Definition of  
terms.  
 Chapter, shall include the commissioners of streets or the  
 other part of them within their respective jurisdictions,  
 as otherwise expressed or repugnant to the sense;  
 the word "streets" shall include highways, lanes and  
 alleys.

Sections five, fifteen, seventeen, and nineteen shall City of Halifax.  
 apply to the City of Halifax.

## CHAPTER 50.

### OF BRIDGES AND PUBLIC LANDINGS.

The sessions shall have control of all public wharves Wharves, land-  
ings, and certain  
bridges under  
control of ses-  
sions.  
 and public landings, and of all draw-bridges, and also of  
 following other bridges, viz:—Lake Porter Bridge, in  
 County of Halifax; the bridge over Sissiboo River, in  
 County of Digby, and the bridge over Bear River,  
 in the counties of Annapolis and Digby, which latter  
 bridges, for the purposes of this Chapter, shall be considered  
 as being in the County of Digby. The sessions may make  
 orders for the preservation and proper keeping of such  
 bridges, wharves and landings, and may appoint persons  
 to superintend the same, who shall in such case be sworn  
 to the faithful discharge of their duties before a justice of  
 peace; and the sessions may affix penalties for the  
 breach of any such orders, not exceeding in any one case  
 five dollars, and may also impose charges on vessels  
 passing 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.



**CHAP. 51.** 2. The sessions, upon the presentment of the grand jury, 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 in 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.

Draws to be made in bridges upon presentment of grand jury.

## CHAPTER 51.

### OF FERRIES.

1. The sessions may establish ferries over harbors, bays, rivers and creeks within their counties or districts, and agree with and grant licenses to ferrymen on one or both sides thereof, under the regulations and at the rate of ferriage by the sessions established or to be established.

2. Ferrymen shall keep safe and good boats or vessels in good repair and suitable for the ferry, and give reasonable attendance on the passengers according to the regulations.

3. Ferrymen not complying with the regulations receiving more than the established rate of ferriage, neglecting to keep boats or vessels or to give attendance as hereinbefore directed, shall forfeit for every offence less than two dollars nor more than eight dollars; and shall be further liable to an action on the case for damages by any person sustained from the neglect.

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.

Ferries established and regulated by sessions.

Duty of ferrymen.

Fine for neglect of duty; further liability.

Fine for interfering with ferryman's privileges.

CHAP. 52.

CHAPTER 52.

OF CERTAIN PROVISIONS RESPECTING RAILROADS.

The proprietor of any railroad whereon any loco- engine shall be run shall cause a suitable bell or whistle to be kept on every engine while running, shall be rung or blown at the distance of at least rods from every place where the rail crosses any road upon the same level with the rail, and shall be ringing or sounding until the engine has crossed.

Bells or whistles to be kept on engines; when to be rung or sounded.

The proprietor of every such railroad shall cause to be placed, well supported by posts and con- maintained, across every road at every place where l by the rail on the same level; such boards and o be of a height to be easily seen by travellers t impeding the travelling; and on each side of the shall be painted in capital letters, at least nine high, the following inscription, to be kept always legible: "Railroad Crossing,—look out for the ."

Painted boards at crossings.

Upon application to the sessions, setting forth that ition to the foregoing provisions it is necessary for security of the public that gates should be placed any such railroad where the same shall cross any n the same level therewith, and that persons should ioned at such gates to open and close the same required for the passing of the engine, the sessions investigate the application and hear evidence thereon; they shall be of opinion that the placing of such and the stationing of such persons thereat is neces- or the security of the public, shall make an order ingly, with which order the proprietor shall comply; such order shall be made unless a summons, to be by the Clerk of the Peace, setting forth the nature application, shall be served on the manager or having charge of the railroad or some known agent proprietor thereof, actually employed in and about road, at least fourteen days before the first day of ting of the sessions at which the investigation shall place, requiring cause to be shewn against such ation.

Gates and keep- rs at crossings may be ordered by sessions.

If any proprietor shall violate any of the provisions three preceding sections, he shall for every offence a sum not exceeding two hundred dollars.

Fine for viola- tion of preceding sections.

If any person shall maliciously obstruct the passing engine or carriage along any railroad, or shall ma- lly place any thing on any railroad now or hereafter

Fine for obstruct- ing railroads.

**CHAP. 52.** to be constructed in this Province calculated to obstruct the passing of any engine or carriage or to injure or endanger the same, or shall maliciously injure such railroad or any thing thereto appertaining or any materials or implements for the construction or use thereof, such person, and also every person abetting the offence, shall forfeit a sum not exceeding two hundred dollars or be imprisoned for a term not exceeding two years.

*Fine for going upon or leading animals on railroad.*

6. If any person after any such railroad shall be opened for use shall himself go thereon, or shall ride, drive or lead any animal thereon without the consent of the proprietor, he shall for every offence forfeit four dollars; but nothing in this section shall prevent the passing across the railroad where the same is crossed by any other road on a level therewith.

*Fine for cattle trespassing on railroad limits.*

7. If any animal shall be found going at large within the limits of any such railroad after the same is opened for use, the person through whose neglect the same shall occur shall for every offence forfeit one dollar; provided the railroad shall have on the sides thereof where it shall not cross some other road on the same level, a lawful fence.

*Imprisonment when no goods to satisfy fine.*

8. If any person convicted under any of the two preceding sections shall not pay the judgment, and no goods can be found whereon to levy, he may be imprisoned for a term not exceeding one day for every one dollar of the amount of the judgment; such term in no case to exceed three months.

*Special constables, how appointed; their badges and duty.*

9. In order more effectually to prevent breaches of the foregoing regulations, the general sessions or any special sessions not interested in the railroad or connected therewith may appoint and swear in constables for such railroad, to be nominated by the proprietor; and such constables shall be stationed at such places as may be deemed necessary at the expense of the proprietor, and shall carry such distinguishing badges when on duty as the general or special sessions shall direct, and shall have all the powers of constables in preventing such breaches, and for apprehending offenders and taking them before justices of the peace, and for preserving public peace and order on and within the limits of the railroad.

*Fences, crossings, cattle guards, &c., to be provided.*

10. Within three months after any lands shall be taken for a right of way for any private railway, the company, if thereunto required by any owner of the lands through which such railway passes, or by the Custos of the county in which such railway is being built, shall, at their own cost and charges, erect and maintain on each side of such railway, fences of the height and strength required by Chapter 24, "Of Fences, Fence Viewers and Impounding

each surveyor, and the number of days which each person shall be liable to perform; and the sessions shall make such regulations to secure the due notification of the surveyors as to them may seem proper; and two days' labor shall be remitted to the person with whom the assessment roll is so lodged. CHAP. 46.

22. 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 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. Expenditure of moneys.

23. 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. By day's work to be attested.

24. 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. Penalty on surveyor for neglect.

25. 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. How recovered and applied.

26. 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. Penalty.

27. 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. Pay of surveyors.

**CHAP. 53.** 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.

Bye-laws, and proceedings to be regulated thereby.

2. All corporations may, by their bye-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 bye-laws not exceeding in any case the sum of twenty dollars for any one offence.

Proceedings, how recorded, when required by act of incorporation.

3. When any charter or act of incorporation shall direct that the bye-laws and list of shareholders, or either of them, shall be registered, no bye-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 bye-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 bye-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 situated.

First meeting, how called.

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 situated, or if there be no newspaper in the county, then in two of the Halifax newspapers.

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 equally authorized to preside thereat.

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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 corporation 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 property.

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.

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.

Charters to continue three years after expiration, for closing concerns.

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 un-

Trustees may be appointed to wind up business within the three years.

**CHAP. 53.** finished business of the corporation; and the powers 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 shall be liable for any debts of the corporation or for acts in relation to its business, or to contribute for money paid by such officers or members on account of any such debts or damages, he may be sued therefor in the Supreme Court.

Liability of individual members.

13. No member of any corporation shall be released from individual liability for its debts or obligations; and each member thereof shall be liable as a partner to the same extent as if no corporation existed; and in case of execution issued on any judgment against the corporation, shall be returned unsatisfied, the individual real or personal estate of every member of the corporation shall be liable to respond to such judgment under execution thereon in the same manner as if the same were a personal debt due by such member, unless the special act or charter of 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. personally in special cases.

14. The directors or board of managers of any 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 provision shall not extend to insurance companies.

Acts of companies valid without seal.

15. The acts of incorporated companies performed in the scope of their charters or acts creating them shall be valid, notwithstanding they may not be done unless authenticated by the seal of such corporations.

No company to engage in banking or insurance business unless specially authorized.

16. No corporation shall issue notes or bills for the payment of money, for the purpose of circulating the same, or engage in any banking or insurance business, unless especially authorized to do so by its act or charter 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.

Arbitrations, how conducted where a corporation is a party.

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

come 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: unless both parties shall concur in the appointment of a single arbitrator, each party on the request of either party shall, by writing under the hand of the party 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 either of the parties operate as a revocation thereof; and if either party shall fail to appoint an arbitrator within four days after service upon him of such written request, the Judge of the Supreme Court, at the instance of the other party making such request, may appoint an arbitrator to decide the matters in question, and his award shall be final. If any arbitrator after his appointment die or be incapable from absence or otherwise, or refuse, or 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 stead: and if for seven days after such substituted arbitrator shall have received notice in writing from the other party for that purpose he fail to do so, the other arbitrator shall proceed to hear and determine the matters in question.

If two arbitrators shall have been appointed, they shall, before entering upon the matters referred to them, by writing under their hands an umpire to decide between them if they shall differ; and, if the umpire shall die, refuse 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. Arbitrators or umpire may call for the production of documents in the possession or power of either party if they or he may think necessary for determining the matters referred to them, and may examine the parties and 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 borne by such party, or by both parties in such proportions, as shall be directed in the award.

Submission to any such arbitration may be by rule of court or of any court.



## CHAP. 53.

Abstract of receipts, &c., of all joint stock incorporated companies to be filed, &c.

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, bye-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 insurer 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.

Acts of incorporated pier companies, &c., to continue to 31st December, 1875.

21. All acts of incorporation of wharf, pier or breakwater companies, heretofore passed by the Legislature of Nova Scotia, whether temporary or perpetual, and also all such acts of incorporation hereafter to be passed previous to the session of the General Assembly, in the year one thousand eight hundred and seventy-five, shall continue in force until the thirty-first day of December in that year, and no longer, unless renewed by act of the Legislature.

Not to conflict with Canada law.

22. Nothing herein shall be construed to contravene or conflict with any legislation (*intra vires*) of the Parliament of Canada.

## CHAPTER 54.

CHAP. 54.

## OF CERTAIN JOINT STOCK COMPANIES.

1. Any five or more persons who desire to form a joint stock company, and to become incorporated, may make and sign a declaration thereof, in writing, according to the form in the Schedule, in which they shall state the names and residences of the subscribers, the number and amount of shares of which the capital stock is to consist, the number of shares taken by each subscriber, the corporate name of the company, not being that of any previously existing company, the object for which the same is formed, the name of the town or place where the business of the company is to be carried on, and the amount of capital to be paid up before the company shall go into operation; but no company shall be thus incorporated for banking, insurance, or ordinary mercantile and commercial business; nor shall any company incorporated under this Chapter engage therein.

Declaration required on formation of company.

Restrictions.

2. Such declaration shall be signed in duplicate by the parties desirous of being incorporated, by themselves or an agent or agents thereunto duly authorized in writing; and in such case the power of attorney shall, if executed out of the Province, be duly authenticated by a notarial certificate; and such power of attorney and certificate shall be attached to the declaration; and the declaration shall in all cases be, and purport to be, executed in the presence of a subscribing witness to each signature; and one of the duplicates, with the original power of attorney attached, shall be filed in the office of the Registrar of Deeds for the county or district wherein the proposed place of business is situate; and the other duplicate, with a copy of such power of attorney, shall be filed in the office of the Provincial Secretary at Halifax.

Declaration to be in duplicate, how signed.

Where filed.

3. When the formalities prescribed in the foregoing sections have been complied with, the persons signing such declaration, their associates and successors, shall be a body corporate, by the name therein mentioned, to the same extent as companies incorporated by act of the Legislature, and shall be subject to Chapter Fifty-Three, "Of General Provisions respecting Corporations," except as herein provided.

On compliance with foregoing sections, parties to be a body corporate.

4. Before any such company shall go into operation twenty-five per cent. of the subscribed capital shall be actually paid up in cash; and a certificate thereof, verified by oath of the president and treasurer of the company, shall be filed in the office of the Registrar of Deeds for the county or district.

When to go into operation.

## CHAP. 54.

Liability of  
shareholders.

After transfer.

If dividend paid  
out of capital,  
directors liable  
for debts.

Directors filing  
objections  
exempt.

Meeting for in-  
creasing capi-  
tal stock, how  
called, &c.

Proceedings  
thereat.

5. Every shareholder shall be liable in his person and separate estate during membership to an amount equal to double the stock held by him, deducting therefrom the amount actually paid to the company on such stock, unless he shall have made himself liable for a greater amount by becoming surety for the debts of the company. But no shareholder, who may have transferred his interest in the stock of any such company, shall cease to be liable for any contracts of the company entered into before the filing of the certificate of transfer, provided for by the fourteenth section, so as any action in respect of such liability shall be brought within six months after the filing of such certificate.

6. If the directors declare and pay any dividend when the company is insolvent, or whereby the company is rendered insolvent, or which would diminish the amount of its capital stock, they shall be jointly and severally personally liable for all the debts of the company then existing, and for all debts subsequently created during their tenure of office; but any director who objects to the payment of such dividend may, before such payment, file with the secretary of the company, and with such Registrar of Deeds, as aforesaid, a written statement of such objection, and shall be thereby exempt from such liability.

7. Whenever the whole capital stock has been taken up, and a majority of the directors of a company, by their votes, resolve and declare that the capital stock of such company is insufficient for the purposes thereof, they may call a general meeting of the stockholders of the company, giving at least thirty days' notice of such meeting, by a written notice, signed by the secretary, and addressed to each of the shareholders or their representatives, and transmitted through the post office, and by advertisement thereof in a public newspaper, published nearest to the place where the company's affairs are transacted, and continued to be so published until the day of meeting.

8. At such meeting a majority of the stockholders holding a majority of the shares in the company, may, by their votes given thereat, in person or by proxy, pass a resolution authorizing the directors of the company to increase the capital stock thereof to such amount as they deem necessary for the purposes of the company, the amount whereof shall be expressed in such resolution; and thereupon such directors may pass a bye-law for the purpose of increasing the capital stock to the amount mentioned in the resolution of the general meeting of stockholders as aforesaid, and for declaring the number of shares into which such capital stock shall be divided, and the time and manner of payment of the several calls to be made for

the payment of such new stock, twenty-five per cent. at **CHAP. 54.**  
 least of which shall be actually paid up in cash.

9. Upon the passing of such bye-law all persons who  
 desire to become holders of any share or shares of such  
 new stock, may make and sign a declaration, in which shall  
 be set forth the amount of such new stock; the total  
 amount of the company's capital stock, including new  
 stock; the number of shares of such new stock; the total  
 number of old and new shares of stock. Such declaration  
 shall also contain a column wherein shall be set in figures,  
 opposite to the signature of each subscriber, the number  
 of shares for which he subscribes.

Twenty-five per  
 cent. paid in.  
 New stock, how  
 taken up.

Contents of de-  
 claration.

10. Such declaration shall be signed in duplicate, and  
 shall be certified and filed in the office of the Provincial  
 Secretary, and in the county or district registry of deeds  
 office, in the manner mentioned in the second section of  
 this Chapter.

To be in dupli-  
 cate and filed.

11. The declaration shall not be so filed or certified  
 until at least one-half of the new stock has been sub-  
 scribed.

Not filed until  
 half stock  
 subscribed.

12. When the declaration has been so filed the name  
 of every stockholder contained therein shall forthwith be  
 entered in the books of the company, as that of a stock-  
 holder, with the date of subscription and number of shares  
 subscribed for; and, so long as any of such stock remains  
 unsubscribed for, any person desirous of becoming a stock-  
 holder may subscribe his name to the declaration filed in  
 the registry office for one or more of such unsubscribed  
 shares; and the name of such subscriber shall forthwith be  
 entered in the books of the company in manner afore-  
 said.

Names of stock-  
 holders entered  
 in books pro-  
 perly.

Remainder of  
 stock, how taken  
 up.

13. Upon the performance of the several acts mentioned  
 in the next preceding section, and payment of the instal-  
 ments as required by the eighth section, every such stock-  
 holder whose name has been subscribed to the declaration,  
 shall immediately thereupon become a member of the cor-  
 poration, and from thenceforth shall have and enjoy the  
 same rights and privileges, and be subject to the same con-  
 ditions, restrictions and liabilities, to which the original  
 stockholders are thenceforth entitled or liable; and such  
 new shares of stock shall thenceforth be subject to all the pro-  
 visions of this Chapter relative to such companies, in the  
 same manner as if they had formed a part of the stock ori-  
 ginally subscribed.

Upon compli-  
 ance with Chap-  
 ter, new stock-  
 holder to be a  
 member of the  
 corporation.

14. The bye-laws of the company, and all the amend-  
 ments thereof, made therein from time to time, and the  
 names of all future shareholders in the company, and the  
 transfers of all shares, with the dates of such transfers, shall  
 be certified in duplicate by the *president* under his hand,

Bye-laws and  
 transfers cer-  
 tified and filed.

**CHAP. 54.** which certificate shall, within one month, be transmitted to the Provincial Secretary's office, and filed in the office of the Registrar of Deeds of the county or district; and such transfer shall not be complete until such certificate is filed.

Transfer not completed until filed.

Declaration required for formation of company by three or more.

15. If three or more parties shall desire to be incorporated for any lawful purpose or business, and shall make, execute, and file a declaration similar to that referred to in the first section, except that no reference need be made to the proposed capital, and shall state therein that they do not seek under such incorporation to become free from personal responsibility, such parties shall thereupon become a body corporate, and shall be entitled forthwith to go into operation; but in that case the members thereof shall be personally liable for all debts and undertakings of the company.

Liability.

Company must go into operation within one year.

16. No company shall become incorporated under this Chapter, or be entitled to the privileges thereof, unless it shall go into operation within one year from the filing of the declaration first hereinbefore referred to.

Proceedings to wind up company if insolvent, or suspended.

17. Whenever it shall be made to appear to the Supreme Court or a Judge upon affidavit, by a shareholder that such company is insolvent, and that shareholders representing two-thirds of the paid-up capital are desirous of winding up the affairs of the company, or that the company has suspended business for a year, or has not commenced business within a year after the filing of the said declaration, or upon affidavit of a creditor of the company, that his debt is unpaid, that the company is insolvent, and that one month's notice of the application has been given to the secretary, an order may issue to appoint a receiver, as in ordinary cases of co-partnership, and thereupon the whole matter shall be referred to a master, with power to cite parties with books and papers to take evidence and report; and if it shall appear that such company is insolvent, the Court or a Judge may make calls upon the shareholders to the extent of their liability, for all sums needful for discharging the debts of the company, and the costs of winding it up, and may order payment thereof; and may, if deemed fit, order all suits pending against the company, at or after such application, to be stayed, and may order such a distribution of the funds of the company, and make all such further orders for winding up the company, as may appear just and right, and may dismiss such application with or without costs.

Court may appoint a receiver.

And make necessary orders.

Gas and water companies.

18. No gas or water companies shall be incorporated under this Chapter within the City of Halifax.

Not to conflict with Canada aw.

19. Nothing herein shall be construed to contravene or conflict with any enactment of the Legislature of Canada on the subject of insolvency, or otherwise.

SCHEDULE.

It is remembered that on this — day of —, A. D. —, we the undersigned shareholders have agreed and covenanted to form ourselves into a company, to be called —, according to the provisions of Chapters 53 and 54 of the Revised Statutes, "Of General Provisions relating to Joint Stock Companies," and "Of certain Joint Stock Companies," for the purpose of —; and we do hereby declare that the capital stock of the said company shall be — dollars, which may be increased from time to time, to be divided into — shares, of the value of — dollars each, and that twenty-five per cent. at least of such capital stock shall be actually paid up before the said company shall go into operation. And we the undersigned stockholders do agree to take and accept the number of shares set by us opposite our respective signatures; and we do hereby agree to pay the same thereon, according to the requirements of the said Statute Chapter 54, and of any rules, regulations, or bye-laws of the said company, to be made or passed in that behalf. And we do hereby appoint — to be the place for holding the annual and other meetings of the said company.

Name.	Place of abode.	Number of Shares.	Amount.

CHAP. 55.

## CHAPTER 55.

## OF INCORPORATED SURETIES FOR OFFICERS.

Governor in Council may accept security of incorporated company, &c.

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.

Such securities may be accepted from other than public officers.

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 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 bye-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.

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OF LIBRARY ASSOCIATIONS AND INSTITUTES.

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 state :

Persons intending to form library institutions to make a declaration in duplicate.

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 bye-laws are to be made for such appointment or admission, or for any other purpose, or for all purposes;
- 6.) Generally such other particulars and provisions as they may think necessary, not being contrary to this Chapter or to law.

One duplicate of such declaration shall be filed in the office of the Registrar of Deeds for the county or district in which one of the subscribing parties, who shall, before such Registrar, acknowledge the execution thereof by himself, shall declare the same to have been executed by the other parties thereto, either in person or by their attorneys.

One duplicate filed in office of Registrar of De. ds.

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 copy thereof certified by such Registrar shall be *prima facie* evidence of the facts alleged in such declaration and certificate.

Registrar to give certificate of having filed duplicate.

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 purpose 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

Formalities complied with, members of institution to be a body corporate.



**CHAP. 56.** corporation any messuages, lands, tenements or hereditaments, situate within this Province.

Incorporation of such institute or association already established.

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 bye-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.

Extent of property held by institutes in towns of 3000 inhabitants.

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.

In town not having 3000 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 other cases.

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.

Affairs of corporation managed by directors or trustees.

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 bye-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 any provisions touching the exercise of such powers in the declaration aforesaid, or in any bye-law of the corporation.

Making of bye-laws.

10. Such trustees or a majority of them may make bye-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 bye-laws shall be made in some other manner.

Election of officers, &c.

11. The members of every such corporation may, at their annual meeting, to be held on the day appointed by a bye-law of the corporation, choose from among themselves a president, and may appoint (except it be otherwise provided in the declaration and bye-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. CHAP. 56.

12. A failure to elect trustees on any day appointed for that purpose by the declaration or by any bye-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 bye-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. Election of trustees.

13. Every such corporation may by its bye-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 bye-laws for the contravention whereof it is imposed. Fine for contravening bye-laws.

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 bye-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 any such bye-law may be proved by the oath of any one credible witness. Recovery of fines and subscriptions.

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 bye-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 bye-law. In any suit of corporation, members competent witnesses. Evidence of bye-laws.

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 Corporation may be at same time institute and library association.

**CHAP. 57.** 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.

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## TITLE XIII.

### CHAPTER 57.

#### OF MUNICIPALITIES.

**1.** Any county may have the benefit of municipal government; and the desire of a county to be incorporated hereunder shall be ascertained and testified in manner following:

**Meeting.** If one hundred persons, certified by two justices of the peace to be freeholders, shall present a requisition to the Sheriff to that effect, he shall name a day and place for holding simultaneously a meeting in each electoral district in the county, and shall appoint a presiding officer and clerk of each district; of which meeting notice ten days previously shall be given in three of the most public places of each district, by printed handbills with a copy of the petition affixed, setting forth the object.

**Votes.** The Sheriff and presiding officers shall, at the time and place appointed in each electoral district, convene the meeting and receive the votes for or against the county incorporation, to be given by the persons present qualified to vote for members of Assembly, resident within the district, the names of which voters and their votes the clerk shall take down in writing.

**Meetings, when open.** The meetings shall be held from nine o'clock in the morning till three o'clock in the afternoon, when the meetings shall be closed, and the presiding officer shall seal up the list of voters, and their votes, and return the same to the Sheriff.

**Return.** The return shall be publicly opened and counted by the Sheriff in the presence of the Clerk of the Peace, on a day and at a place to be previously appointed, and a majority of the whole votes shall decide the question.

The Sheriff shall return the result to the Governor in Council; if in favor of incorporation, the Governor by proclamation shall declare the county to be incorporated under this Chapter; unless just grounds to impugn the legality and fairness of the proceedings shall be shewn to the satisfaction of the Governor in Council; in which case the proclamation may be withheld until examination into the legality of proceedings can be had, and the Governor and Council shall ultimately decide accordingly as the regularity and fairness of the proceedings or the reverse shall be established.

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Return, how noted upon.

The Sheriff shall receive eight dollars, the presiding officers two dollars each, and the clerks one dollar each, in full for their services, to be paid by the county or district.

The proceedings may be renewed at any period not less than twelve months from any rejection of incorporation.

Proceedings, when renewed.

2. The inhabitants of every county incorporated under this Chapter shall be a body corporate, under the name of the Municipality of \_\_\_\_\_, and shall have 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 municipal council of such county.

County incorporated, &amp;c.

3. The council shall consist of a warden and councillors; the warden to serve for one year, and the councillors after the first election for two years, and until their successors shall be sworn into office.

Council, what to consist of.

4. The first election of councillors shall be held on the third Tuesday of November, and shall be conducted by the Sheriff and persons named by him; all succeeding general elections shall be held on the third Tuesday of November in each year, and shall be conducted by presiding officers named by the councils.

Time of elections.

The elections shall take place in and for each of the electoral districts laid off for the election of members to serve in General Assembly; and each district shall return two councillors, except when otherwise provided in the Schedule A. hereto annexed; and the election shall take place in and for the several districts comprised in that Schedule as therein directed, in the same manner as if the said Schedule were incorporated in this Chapter.

Districts, &amp;c., number of councillors returned.

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What districts  
to be considered  
as separate  
counties.

For the purposes of this Chapter the districts of Saint Mary's, in the county of Guysborough, and Barrington in the county of Shelburne, the township of Clare, in the county of Digby, and the township of Argyle, in the county of Yarmouth, shall be treated as separate counties and incorporated accordingly. And the court houses at Barrington, Sherbrooke, Tuskent and Clare, shall be used as county court houses in those districts respectively for the purposes of this Chapter.

Notices of elec-  
tions; presiding  
officers.

5. It shall be the duty of the Sheriff in the case of the first election, and of the presiding officers in future elections, to give at least ten days public notice, in writing, of the times and places of holding the election, and post the same in three of the most public places in each district, and the Sheriff and persons appointed by him shall preside at such first election, and persons appointed by the council shall preside at future elections.

Notices, how  
supplied.

It shall be the duty of the municipality clerk to supply the presiding officers with the notices after the first election.

Division of coun-  
cillors.

6. Soon after the first election the councillors shall be divided by the council into two sections, to be distinguished by lot number one and two, the members of which beginning with section number one shall go out of office in each alternate year. In forming these sections the councillors for districts returning two or more shall be apportioned between the sections.

Time of election  
of councillors  
composing each  
section.

7. On the third Tuesday of November, in the year next following that in which the first election shall be had, and on the same day in each succeeding year, an election shall be held of the councillors in one section, beginning with number one, and proceeding in all future annual elections in regular alternation: the members returned at each election shall be entered on the list of the section previously occupied by the members then vacating office: councillors going out of office may be re-elected.

Election, how  
conducted.

8. Every election shall commence at nine o'clock in the morning. No candidate shall be proposed after twelve o'clock; at any time after that hour the poll may be closed by proclamation if no vote be polled within the hour, and the poll shall not be continued later than five o'clock in the afternoon. At the close of the poll the presiding officer shall proceed, publicly, to declare the number of votes given for each candidate, and shall proclaim the person having the majority of votes to be duly elected, and summon him to attend on the second Tuesday of December following, at the county court house.

Casting vote.

If there shall be an equal number of votes, the presiding officer shall give a casting vote, and so determine the election.

The presiding officer and his clerk shall then and there publicly subscribe the poll list and seal up the same, and the presiding officer, within two days after the close of the election, under the penalty of four dollars for each day's delay thereafter, shall make return in writing of the councillors elected, together with the poll list, the seals having been unbroken, at the first election to the Sheriff, and at subsequent elections to the municipality clerk: and such poll list, after having been published as hereinafter provided, shall be open to the inspection of every member of the corporation.

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Poll list to be signed and sealed; returns.

9. 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.

Notice to councillors.

10. 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 peace and two electors, and they shall certify such oath in the poll book for the election.

Presiding officers and clerks to be sworn.

11. No person shall vote except in the district in which he resides.

Elector, where to vote.

12. 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.

Elector, qualification for.

13. No person shall be qualified to be elected or serve as a 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.

Councillor, qualification for.

14. 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:

Persons disqualified.

I. Persons in holy orders, or ministers or teachers of any religious sect or denomination; but this restriction shall not extend to school commissioners.

II. The Sheriff.

III. Any person having a contract, or share or interest in a contract with the municipality.

IV. Any person receiving a pecuniary allowance from the municipality for his services in any office other than that of warden or councillor.

**CHAP. 57.** 15. The following persons shall be exempt from being elected councillor or serving in any municipal office, unless with their own consent.

Persons exempted.

I. Justices of superior courts and of probate.

II. Members of the Executive and Legislative Councils, members of the House of Assembly, schoolmasters actually engaged in teaching; any miller who shall be the only one employed in a mill; persons more than sixty years of age.

III. 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.

Warden, qualification of.

16. At each annual election, including the first, the electors may vote for a warden from among the body of inhabitants resident within the municipality, and qualified as is required for a councillor; and the Sheriff, at the first election, and at subsequent elections the presiding officers, shall return under seal the votes given for warden in each district, when they make return of the councillors elected.

Return of votes for warden.

How elected.

17. On the first meeting of the council following each annual election, the council shall ascertain the votes given for warden in all the districts; and any one person having a majority of the whole number of votes given for warden shall be warden for that year; and he shall take the oath of office, and also, if he shall not be a councillor already sworn in, the oath of qualification, and shall have all the authority of a councillor while warden, and be liable to a like fine for non-acceptance of office, or not qualifying.

In case no majority, or warden not qualified.

18. In case no person shall have a majority of the whole votes given for warden, or being so elected shall not qualify and serve, the council shall choose by a majority of votes from among themselves or from among the inhabitants, at their discretion, a warden duly qualified.

Duration of office.

When vacancy occurs.

19. The warden shall hold office for one year, and thereafter until his successor be appointed, but he may be re-elected. Whenever a vacancy occurs during the term of office, by death, resignation or otherwise, the council shall, at its first meeting thereafter, proceed to elect a warden for the remainder of the term; during the temporary absence of the warden, his place may be filled by a chairman for the time being, with all the authority of the warden, chosen by the members present.

Presiding officers at elections, power of.

20. 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 in 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 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 be deemed guilty of a misdemeanor, and be punished accordingly.

21. 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 bye-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.

Councillors must take oath of allegiance.

Exemption from penalty.

22. 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, the warden of the county shall issue a warrant, under his hand and seal, to the presiding officer, requiring him to call a public meeting 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 before the annual election.

Election of councillor in case of vacancy.



**CHAP. 57.**

Organization of council.

23. On the second Tuesday of December, after the first election, the Sheriff and the councillors elect shall meet at the county court house; and the Sheriff, having produced the returns of the presiding officers, and the seals being then and there broken, and the returns examined, and the councillors elect having been sworn into office, the council shall be organized and proceed to business.

Time of meeting after first year.

24. On the second Tuesday of December, after the annual elections in all subsequent years, the municipal council and the councillors elect shall meet at the county court house, 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.

25. 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 bye-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.

Members compelled to attend.

Questions, how decided.

Number of meetings in each year.

26. There shall be two established meetings of the council in each year: the first, herein designated the annual meeting, shall be held at the county court-house on the second Tuesday of December; the second, herein designated the half-yearly meeting, shall be held at such place as the council may appoint, on the last Tuesday of April.

Extra meetings, notice of.

27. Besides such 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.

Clerk and treasurer, appointment of.

28. Each council shall appoint a clerk and a treasurer, who shall respectively perform the duties now exercised by the Clerk of the Peace and County Treasurer, as far as the same come within the scope of the corporation and of this Chapter; and the council shall prescribe the duties of such officers, and the security to be given for the faithful performance thereof.

Duty of clerk.

29. The general duty of the clerk shall be to record in a book all the proceedings of the corporation, 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, CHAP. 57.  
 records and accounts of the corporation, which shall be  
 open, without fee or reward, to the inspection of all per-  
 sons at all reasonable times and hours.

30. The treasurer shall be appointed annually. It shall Duty of trea-  
 surer.  
 be the duty of the treasurer to receive and safely keep all  
 moneys 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 bye-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  
 bye-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 moneys which shall come into his hands  
 by virtue of his office, as the municipal corporation by  
 which he was appointed shall direct.

31. The council shall make such bye-laws or regulations Council to make  
 bye-laws, &c. as  
 to clerk's office.  
 as to the duration of the office of the clerk, as to them shall  
 seem fit.

32. The council shall make such bye-laws or regula- Fame as to num-  
 ber of officers, &c.  
 tions as to the number of offices to be held by one  
 person, as to the holding of offices by partners of municipa-  
 lity officers, and as to officers having an interest in any  
 work undertaken for the municipality, as to them shall  
 seem fit.

33. A warden or councillor may resign his office at any Resignation and  
 fine.  
 time by a declaration to that effect under his hand, and on  
 payment of a fine of forty dollars.

The warden or councillor elected to fill an occasional Duration of office  
 of warden, &c.  
 vacancy, shall hold office for the residue of the term of the  
 person whom he succeeds, and no longer; but he shall be  
 capable of re-election if qualified.

34. The council shall have power to make, and from Formation of  
 bye-laws.  
 time to time alter, such rules and regulations as may be  
 requisite for the conduct and good order of their proceed-  
 ings, and such bye-laws touching any matters within their  
 authority as they may judge proper.

35. The council at their first meeting in each year, or as Auditors, ap-  
 pointment of,  
 qualification, &c.  
 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 con-  
 tract with the municipality council, or any employment

**CHAP. 57.** 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.

**Auditors; duty of.** 36. 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 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.

**Authority of auditors.** 37. 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 of the municipality.

**Salaries of warden and councillors.** 38. The warden and councillors shall be paid, that is to say: the warden by a salary to be established by the council, and the councillors according to their actual attendance, at such rate as the council by bye-laws shall determine, not to exceed one dollar per day, and travel at the rate of five cents going and returning per mile.

**Attendance.** 39. The clerk shall keep an exact account of the attendance of councillors at every meeting.

**Fine for non-attendance.** 40. The warden and councillors shall respectively be liable to such fines for non-attendance or other neglects, as the council by bye-laws 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 are deducted.

**Vote for the poor, overseers, &c.** 41. On the first meeting of the council, after each annual election, or as soon after as may be convenient, the council shall vote for each poor district the sum they shall judge necessary for the support of the poor in that district and the purposes enumerated in Chapter 33 "Of the Settlement and Support of the Poor," 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 they have power from time to time to alter, if they shall see fit to do so.

**Council to exercise functions of grand jury, sessions, &c., as given by chapters 33 and 34.** 42. The overseers of the poor shall account to the council instead of the sessions; and the council shall exercise the functions given by such Chapter 33 to the grand jury, town meetings and general and special sessions, and to the sessions by Chapters 33 and 34, and shall hear and determine appeals, and in all particulars shall carry out the objects of those Chapters as nearly in conformity with the mode thereby directed as shall be consistent with this Chapter and the incorporation thereunder.

43. In the exercise of the functions, and the carrying out of the objects stated in the next preceding section, and also in any other matters exclusively relating to townships or special districts, and which have heretofore been managed by township or district officers, and under township or district authority, the municipality may appoint, or carrying into effect and managing the same, committees of their own body, comprising councillors returned from each townships or districts, which committees may meet from time to time, and shall specially attend to and regulate the affairs of those townships or districts under the supervision, direction and control of the council, and subject to their orders and revision, and liable to be superseded at their pleasure.

CHAP. 57.

Committees, formation of.

44. The municipalities may vote, assess, collect, receive, appropriate, and pay, whatever moneys are required for purposes named in the twenty-first Chapter, and shall have all the powers and authority which, when this Chapter shall go into operation, may be possessed by the grand jury and sessions 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.

Power of municipalities.

45. The municipalities, for raising the moneys required under such thirty-third and twenty-first Chapters, and which may be required for any other township, district or county purposes, shall at the annual meeting in December, appoint a suitable number of assessors and collectors, and 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, otherwise by the councillors for the electoral district or districts within which the assessors or collectors were limited to act.

Appointment of assessors.

Casual vacancies, how filled.

46. 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 bye-law of the corporation 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 December next after, or until their successors be appointed.

Duration of office of treasurer, assessors, &amp;c.

47. The municipal financial year shall end on the thirtieth day of November; 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 December.

Financial year, when ended.

48. At the half-yearly meeting in April the road moneys granted by the Legislature shall be apportioned to the extent and upon the principles which the Legislature may

Road moneys, distribution of.

**CHAP. 57.** from time to time direct and approve; commissioners ~~from~~ the expenditure thereof shall be appointed, and any other appointments and business attended to.

Appointment of commissioners.

Appropriation lists sent to secretary.

49. At the same meeting the council shall transmit to the Provincial Secretary a full and exact list of the appropriation of the road moneys granted by the Legislature, with the commissioners' names.

Commissioners, duties of.

50. The commissioners shall lay out the money and make account of the expenditure, as the law now does, or hereafter may require; but their accounts, instead of being attested before a justice of the peace, shall be audited and sworn to before a councillor resident in the district where the work may be performed, or, if none shall be resident therein, a councillor resident in an adjacent district; and such councillor shall certify the account as approved under his hand. The commissioners shall draw for the money, and their accounts shall be audited and paid at the Provincial Secretary's and Treasurer's offices, as is now done.

Account of commissioners.

51. The commissioners shall immediately return a duplicate of their account to the municipality clerk; and the council shall, at the annual meeting in December, examine these accounts, and return a full abstract to the Provincial Secretary.

Account, further examination of.

52. If any occasion shall induce the council to judge a further examination of any account to be necessary, they shall refer the same to the municipality auditors, to whom the commissioners shall make explanations; and the auditors shall report thereon to the council before the half-yearly meeting in April.

School commissioners, appointment of.

53. The council shall appoint a board or boards of school commissioners in place of the boards which may be acting at the time this Chapter shall go into operation; the members severally to hold office during the pleasure of the council. The board of school commissioners shall appoint their own clerk, and, in addition to the returns required by law, shall make a full account of their appropriations, expenditures and proceedings to the municipality clerk, at such times as the council may order. The municipality clerk shall immediately place the returns in the hands of the auditors, who shall examine and report thereon to the council at their next general meeting; and the council shall examine and adjudicate on the same.

Municipality property, court house, &c.

54. Each municipality shall have authority for the purchase, acquirement and management of all such real and personal property within the municipality as may be required for 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

air of the municipality court house, jail, lock-up house, CHAP. 57.  
 vn hall, and all other buildings required by or being  
 on any land belonging to the municipality as a corpora-  
 n ; and shall have and possess all powers given to the  
 sions by the twenty-third Chapter ; and the protection,  
 re and management of municipality property, and the  
 le, powers and authority of the grand jury, sessions and  
 isteers, under the fifty-eighth Chapter.

55. The municipal councils shall appoint a sufficient Pound keepers,  
 mber of pound keepers, fence viewers, overseers of the fence viewers,  
 ghways, road surveyors, and of such and so many officers &c., appointment  
 may be necessary for carrying into effect any of the pro- of, duties, fees,  
 ceptions of this Chapter, or of any act of the Legislature, penalties, &c.  
 ncerning any of the subjects placed under the jurisdic-  
 on of the councils, or of any bye-law of the municipality ;  
 d in like manner to displace any of them and appoint  
 ers in their room, and to add to or diminish the number  
 them as often as the corporation shall see fit, and to  
 gulate their powers and the limits wherein they shall be  
 ercised ; and shall regulate and prescribe the duties of  
 officers acting under the authority of the corporation,  
 d the penalties of their making default in the perform-  
 ce of such duties, and shall settle the remuneration of  
 such officers, in all cases where the same is not settled  
 act of the Legislature, and the providing for the payment  
 the remuneration which, by act of the Legislature, or by  
 e bye-laws of the municipality, may be provided for  
 ch officers ; and shall regulate the bonds, recognizances  
 other securities to be given by such officers for the  
 thful discharge of their duties ; the penalties for refus-  
 to serve in any office, and for the infringement of any  
 e-law of the municipality.

56. The municipal corporation shall have the appoint- Board of health,  
 nt of health officers, health wardens, and health inspec- appointment of.  
 s, and a board of health, with the authority and powers  
 en to justices in general or special sessions by the  
 enty-ninth and thirtieth Chapters.

57. The municipal corporation shall also make regula- Rabid animals.  
 ns for protection against rabid animals, and the des-  
 ction of noxious animals, and for exercising the author-  
 and powers given to justices in general and special  
 sions by the thirty-first and seventy-fourth Chapters ;  
 o for the preservation of useful birds and animals, and Preservation of  
 e regulation and protection of the river fisheries, and for game and fish-  
 ercising the powers and authority of general and special eries.  
 sions under the seventy-third Chapter and under Chap-  
 95 of the Revised Statutes, Third Series.

CHAP. 57. Setting fire to woods, removing obstructions from rivers, &c.

58. Also for preventing damage by setting fire to woods, felled trees, underbrush, and on bog and marsh lands ; also, for removing obstructions from rivers, and for regulating the bringing down of logs, timber and lumber on rivers, and for exercising the powers of the grand jury and sessions under the sixty-sixth Chapter.

Fires, regulations concerning; firemen, &c., appointment of.

59. The council shall make orders for the prevention and suppression of fires, regulating stoves, stove pipes, flues, furnaces, ovens, and the safe keeping of ashes, and shall appoint firewards, firemen, fire constables, and engine men, and shall exercise the authority and powers of the grand jury in general and special sessions under the sixty-second Chapter, and shall make orders for the prevention of the unnecessary and wanton discharge of fire arms and fire works.

Council to have same power as is given to sessions under certain Chapters.

60. Also, the municipal council shall have the power given to general or special sessions under, and shall make orders for carrying into effect, the sixty-seventh, the sixty-eighth, the sixty-ninth, the seventieth, the seventy-first, and the seventy-second Chapters ; and so much of the one hundred and forty-seventh Chapter of the Revised Statutes, (Third Series,) as relates to preventing trespasses by horses and oxen and other animals going at large.



Acts of clerk of the licenses, how performed.

61. The acts required in the sixty-seventh Chapter to be performed by the clerk of the licenses and by justices of the peace, shall be done by the clerk of the corporation and two councillors, unless otherwise ordered by any by-law or order of the council.

Acts of town clerk, how performed.

62. The acts required in the sixty-eighth Chapter to be performed by the town clerk, shall be done by any officer or person authorized by the council ; and a municipal councillor shall exercise concurrent authority with a justice of the peace under that Chapter.

Chapters 159, 160 and 162 (Third Series) not affected.

63. This Chapter shall not interfere with nor affect the jurisdiction created under the one hundred and fifty-ninth, one hundred and sixtieth, and one hundred and sixty-second Chapters of the Third Series of the Revised Statutes.

Warden to have same power as justice of the peace.

64. The warden while in office shall *ex-officio* be justice of the peace in and for the county, and shall have within the municipality all the powers and jurisdiction well civil as criminal, 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 subject to the corporation, or shall concern the same.

Grand jury and sessions not required to meet.

65. The grand jury and sessions, or the justice session, either general or special, shall not be required to meet for any purpose for which, by law, they are required to meet in any municipality ; but nothing

ter shall be construed to take 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 making of a criminal nature given by any law of this Province or of the Dominion of Canada, 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 Charter, either expressly or by necessary implication.

CHAP. 57.

Power of justices of the peace not affected.

i. The powers and authority of the council shall also extend to the following objects :

Power and authority of council.

The laying out of new roads, and the making, maintaining, or improving of any new or existing road or street, or stopping up, altering, or diverting the same, not excepting a great road, subject however to the provisions of law, and the restrictions and protection to private interests contained in the forty-fourth chapter, and subject to the rights of the Crown and the Province in public property.

Roads.

l. The appropriating and apportioning road money granted by the Legislature, to be laid out in the municipality by the Municipal authority, and appointing commissioners for its expenditure, and the accounting therefor to the government.

Road money.

II. The directing and enforcing the performance of highway labor, and the expenditure of the commutation money for highway labor and all the powers of sessions and of the justices of the peace under the sixteenth Chapter; and the returns therein directed shall be made to the council or their clerk, or as the council may order.

Statute labor.

V. The division of the municipality into road districts, and the appointment of a superintendent of roads in each such powers as regards the roads and bridges, and the expenditure of provincial and municipality money, and the labor therein, as the council shall see fit to confer; the erection, preservation, and repair of any new or existing 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, bridges, &amp;c.

The support of the poor by municipality, township, or district organization, and the erection and maintenance of municipality, township, or district poor houses.

Poor.

l. The making orders for carrying into effect the law, which 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 object.

Intoxicating liquors.



- CHAP. 57.** VII. The regulating ferries, public wharves and landings, and the establishment and regulation of markets and fairs.
- Ferries, wharves, &c.**
- Assessment.** VIII. The providing means for defraying such expenses connected with the administration of justice as require to be defrayed out of the municipality funds; the providing for the establishment and support of schools and hospitals, and the erection of school-houses and hospitals, the raising, assessing, levying, and appropriating all moneys that may be requisite for carrying into effect the objects for which the council are empowered to act or to make bye-laws, and such moneys to be raised by rates to be assessed on real and personal property, or the owners or occupiers thereof.
- Collection of assessment. Proviso.** IX. The collection and accounting for, of all tolls, rates, and assessments of the municipality revenues: but no moneys shall be voted, nor any salaries determined upon, except at one of the two 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.
- Contracts.** X. 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 county clerk.
- Salaries of officers.** XI. 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.
- Returns of assessors; expenses of elections.** XII. The returns of assessors and collectors, with a view to the general business of the municipality. The expense of municipal elections and the mode of remuneration.
- Presiding officers at elections.** XIII. 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, as far as may not be specially directed by this Chapter.
- Contested elections.** XIV. The making of rules and regulations for the trying contested elections of members of their own body, and the trying of such contested elections.
- Prevention of vice.** XV. The enforcing of the due observance of the Lord's day; the prevention of vice, drunkenness, profane swearing, obscene language, and any other species of immorality or indecency in the public streets and roads, and for preserving peace and good order in such streets and roads, and in public places or taverns; for preventing the excessive beating or cruel and inhuman treatment of animals; for preventing the sale of any intoxicating liquors to Indians, children, apprentices or servants; for restraining

d punishing all vagabonds, drunkards, and beggars, and persons found drunk or disorderly in any street, road public highway in the county. CHAP. 57.

XVI. The providing for any other purpose, matter or thing specially subjected to the control of the council by ordinance: but no bye-law shall impose any punishment or imprisonment, or any penalty exceeding twenty dollars. Other matters under control of council.

67. The council, as often as requisite, shall appoint coroners, and determine their limits within which to act. Coroners, appointment of.

68. It shall be discretionary with the municipality council to procure a snow plough, or other machine or contrivance sufficient to keep the roads open and beaten over the fall of snow, to the width of at least eight feet, and place the same under the charge of the commissioners of highways in such district, who shall cause the same to be worked and used by such number of the inhabitants of their district as they shall judge sufficient for its use, and rotation; and the cost of the snow plough shall be defrayed out of the county funds by a rate imposed equally on the whole district. Snow plough.

69. All powers and authorities now vested by law in the grand jury and sessions, in special sessions, or in justices of the peace, to make bye-laws, impose rates and assessments, appoint township or county officers, or make regulations for any county purpose whatever, after the incorporation of any municipality shall be transferred to, and be exercised by, the municipality council only: but no bye-law or regulation made by the council in session shall be considered repealed until the municipality council shall expressly declare such repeal by bye-law; and the county and town officers shall continue to exercise their functions until the first meeting of the incorporated council under this Chapter, and they shall be liable to account to the council. All powers vested in grand jury, sessions, &c., to be transferred to municipality council.

70. All debts, liabilities and obligations of every kind which may be due or owing, or to which any municipality 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 had not been incorporated; and all property of a public nature, and debts of every kind, belonging or owing to any municipality, shall, at the same 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. Debts to be assumed.

71. In assessing any rate or tax the municipality council shall be governed in all things by the laws now or here- Assessment of poor and county rates.

**CHAP. 57.** after to be enacted for the levying and collecting of poor and county rates, except as herein provided; and the 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 War Department.

Allowance to collector.

72. 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 parish officer, shall continue to be paid, after the incorporation of any county, until otherwise ordered by the municipality council.

Bye-laws laid before legislature.

73. An authentic copy of each bye-law passed by the municipality council, shall forthwith, after being passed, be transmitted by the warden or chairman for the time being to the Provincial Secretary, who shall note on such bye-law the date of its receipt, and lay the same before the Governor, by whom the same shall be laid before the Legislature within ten days after the opening of its next session. Any bye-law repugnant to the law of the land, or the provisions of this Chapter, shall be wholly void and of no effect whatever.

Expenditure to be laid before the legislature.

74. 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, and the returns from the several judicial district courts during the preceding year, to the Governor, who shall lay the same before both branches of the Legislature.

Not to extend to toll bridges, &c.

75. 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 or provincial governments, or of the military authorities.

Penalties, how recovered.

76. All fines and penalties imposed by any bye-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 of the peace for the county, and, after the appointment of judicial district courts, before such courts. All fines and penalties, when recovered, shall be paid and applied as the bye-law shall direct. No informer or other person, who is to receive for his own benefit any part of a fine or penalty, shall be 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 bye-law shall direct for that portion which was to go to the informer or prosecutor. No inhabitant of the

Informer not a competent witness, when.

municipality, or member or officer of the council, shall be an incompetent witness in any prosecution for the recovery of a fine or penalty, or in any suit for money payable to the clerk or treasurer, or due to the council, or in any suit wherein the council are a party, or have an interest in the result, by reason of such person being an inhabitant of the municipality, or a member of the council, or an officer or a person in their employ; provided that such person shall have no other interest in the prosecution or suit which would render him an incompetent witness.

CHAP. 57.

Members of council competent witnesses.

77. The municipality council shall strictly account to the Governor for the expenditure of all provincial moneys granted for roads or other municipality uses, and render all needful vouchers. These expenditures shall be examined and audited by the Provincial Secretary, and the accounts laid before the Legislature within ten days after the opening of each session.

Expenditure of road moneys accounted for.

78. In the case of the first election the Sheriff shall receive from the municipality funds the sum of eight dollars in full for his services; and each presiding officer shall receive two dollars, and each poll clerk one dollar, in full for their respective services.

Sheriff, &amp;c., fees on first election.

79. 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 bye-law is not repugnant to the law of this Province or to this Chapter.

Assessments, how recovered.

80. All rates for public purposes, not within the scope and authority of this Chapter, which the inhabitants of any county are now liable, or may hereafter be liable, to pay by any law of the Province, shall continue to be assessed upon and paid by the inhabitants of any incorporated county, until otherwise directed by Act of the Legislature.

Rates for public purposes.

81. Nothing in this Chapter contained shall be construed to repeal or affect the provisions of any law or enactment now in force, except so far only as such law or enactment shall be inconsistent with, or repugnant to, the provisions of this Chapter, or the attainment of the objects and purposes thereof.

Inconsistent or repugnant laws only affected.

82. 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.

Returning officer may administer oaths.

83. 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, except officers for whom the Schedule contains a special oath of office.

Every officer be sworn.

## CHAP. 57.

Oath of qualification, by whom taken.

84. Every person elected or appointed under this Chapter to any office which requires a qualification of property in the incumbent, shall, before he shall enter upon the duties of his office, take and subscribe the general oath of qualification contained in the Schedule of oaths, and shall annex thereto and file with the clerk a schedule of his qualification.

No person qualified to vote, &c., unless a subject of Her Majesty.

85. 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, he, his heirs or successors, and of the full age of twenty-one years.

Oaths, by whom to be administered.

86. When no provision shall be made in this Chapter 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 of the county; 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.

Penalty for refusing to take office.

87. 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, having had notice of such election or appointment; and every person who shall enter on the duties of any 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 bye-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.

Proviso.

Affirmation.

88. Every person authorized by law to make affirmation instead of taking an oath may make affirmation in every case where an oath is required by this Chapter; and any person who shall wilfully swear or affirm falsely in any matter where an oath or affirmation is required by this Chapter, shall be deemed guilty of wilful and corrupt perjury, and be punished accordingly.

Certain corporations not affected.

89. Nothing in this Chapter contained shall abridge, limit or defeat any rights, powers, privileges or jurisdiction

tion of the corporations of the City of Halifax, and the towns of Dartmouth and Pictou, or of the corporation of any other town which may be incorporated during any future sitting of the Legislature. CHAP. 57.

90. Every action brought by or against any municipal-ty council shall be brought by or against the same by 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 county, which, by the sixth and fifty-fourth sections of the twenty-first Chapter, are given to the sessions and the Supreme Court, and may, if need be, appoint assessors and collectors.

Actions against council, how brought.

91. Judgments against a municipal corporation shall bear interest at six per centum per annum.

Judgments, interest on.

92. Coroners appointed under this Chapter shall be sworn into office before the warden, or in his absence two councillors; and the nineteenth Chapter, except the first section, shall be in force as to such coroners. Nothing in this Chapter contained shall affect coroners now appointed.

Coroners to be sworn.

Present coroners not affected.

93. The jurisdiction of the general and special sessions of the peace and of the grand jury, in all matters over which, by this Chapter, jurisdiction is given to the municipal council, is taken away in counties in which this Chapter shall go into operation.

Jurisdiction of sessions and grand jury taken away.

94. The powers and authorities which in Chapters twenty-one, twenty-two, twenty-three, twenty-nine, thirty, thirty-one, thirty-three, thirty-four, forty, forty-three, forty-four, forty-six, forty-seven, forty-eight, fifty, fifty-one, fifty-two, fifty-eight, fifty-nine, sixty-one, sixty-two, sixty-three, sixty-five, sixty-six, sixty-seven, sixty-eight, sixty-nine, seventy, seventy-one, seventy-two, seventy-three, seventy-four and seventy-five, of the Revised Statutes (Fourth Series), and in Chapters seventy, ninety-five, one hundred and forty-seven, and one hundred and fifty-seven of the Third Series of such Revised Statutes, are given to grand juries, justices in session, general or special, or to justices of the peace, and to the officers and persons named by them, and to officers and persons named in those Chapters, for carrying out any of the provisions of those Chapters,

Powers of grand juries, &c., given to municipal councils.

**CHAP. 57.** are given to municipal councils, and to the officers and persons to be appointed by them under the respective by-laws of such councils.

Protection of wardens, &c.

95. The warden, councillors, and officers acting under them, shall be entitled to the protection afforded to justices of the peace and constables, under the one hundred and eleventh and one hundred and twelfth Chapters.

#### JUDICIAL DISTRICT COURTS.

Judicial districts, formation of.

96. The municipal corporation for each municipality shall, at its first meeting, or soon thereafter, divide the municipality into convenient judicial districts, which shall, if practicable, be so formed as not to divide any electoral district or any existing township, and shall appoint three judicial district commissioners for each of such judicial districts. The commissioners shall be qualified as is required for councillors, and before entering upon the duties of their office shall take and subscribe the oaths of allegiance, of office, and of qualification.

Commissioners.

Office of commissioners, duration of.

97. The judicial district commissioners shall retain office for three years and no longer. At the end of that period the municipality corporation shall appoint a new board, but may re-elect two of the out-going officers. The corporation shall also supply occasional vacancies, arising from death, resignation, or otherwise.

No councillor to be a commissioner.

98. No commissioner shall at any time be chosen from among the councillors.

Authority of commissioners.

99. The commissioners shall have authority within their respective districts only. Their writs may extend over the whole municipality, but shall be returnable only within the district, and shall be directed and served as writs from justices are now served.

Jurisdiction.

100. They shall have and exercise within their district the same jurisdiction over actions of contract, and for petty trespasses and assaults under the one hundredth and forty-seventh Chapter of the Revised Statutes, Third Series, and for penalties for violation of the laws relating to the importation, manufacture, or sale of intoxicating liquors, and other penalties, and the same functions for the purposes of trial which justices of the peace may possess at the time the commissioners are appointed. No action shall be sustained unless at the time the writ issued either the plaintiff or defendant shall actually reside, or the cause of action shall have arisen within the judicial district.

One party must reside in district, &c.

Meeting of commissioners, quorum, &c.

101. The commissioners shall meet at some convenient place to be named by the council, on the first Tuesday of every month, and may continue in session for two days, and no longer: causes not disposed of shall stand over: two commissioners shall form a quorum.

102. The commissioners shall have the same power to swear witnesses, and to try by jury, and the same authority as a court, that justices now have; and appeal shall lie from their judgment, and in the same mode as it now lies from the judgment of justices. CHAP. 57.  
Power to administer oaths.  
Appeal.

103. The municipal corporation shall appoint a clerk for each judicial district, who shall take the oath of office before entering on his duties, and by whom, and not by the commissioners, the writs of mesne process and execution shall be issued; but the commissioners as well as the clerk may issue subpoenas for attendance of witnesses, which shall extend over the Province. Clerk of district,  
appointment of.

104. Witnesses in cases before the court of judicial commissioners shall be entitled to the same fees for attendance, and subject to the same obligations to attend and give evidence, and liable to the same penalties for prevarication and for perjury, as in causes at present within the jurisdiction of justices of the peace. Witnesses.

105. After the court of judicial commissioners shall come into operation, the power of justices of the peace, to the extent of the jurisdiction of the judicial commissioners shall cease. Power of justices  
to cease, when.

106. The same fees which in Chapter one hundred and fourteen, under the head "Magistrates Courts," are distinguished as justices fees, constables fees, witnesses fees, and jurors fees, or under any other acts in force relating to such fees, shall be paid upon suits before commissioners; but the fees distinguished as justices fees, shall be received by the commissioners clerk and paid to the County Treasurer. Fees.

107. The commissioners shall be paid according to their actual attendance in court, such amount, and the clerk by such allowance, as the municipal corporation shall appoint; and the remuneration of the commissioners and clerk shall not in anything be made to have relation to or be dependent upon the number of writs issued or judgments obtained, or the amount of fees collected; and neither the commissioners nor the clerk shall, on any pretence, derive any emolument from their office beyond such allowance. No commissioner or clerk 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 commissioner or clerk. Commissioners'  
salary.  
  
No commissioner,  
&c., to be  
employed as at-  
torney.

108. Municipal corporations shall make bye-laws for enforcing a correct and regular account of the writs issued, trials had, judgments entered, and costs incurred, in such judicial district courts, and of the fees paid to the County Treasurer; and shall annually, on or about the thirty first Bye-laws.



**CHAP. 57.** day of December, make a return thereof to the Governor, to be submitted to the Legislature.

Powers, protection, &c., of justices of the peace transferred to commissioners.

109. The powers and authority which, in Chapter Ninety-one of this Series and Chapters One hundred and forty-seven, and One hundred and fifty-seven of the Third Series of the Revised Statutes, are given to justices of the peace, are transferred and given to the judicial district commissioners within their respective districts; and they and the officers executing their process, shall be entitled to the same protection, under the one hundred and eleventh and one hundred and twelfth Chapters, as justices of the peace and constables in the like cases are now entitled to.

Council may alter the limits and numbers of districts, and the number of councillors, &c.

110. The municipal councils may, if they see fit, alter the limits, and increase or diminish the number of electoral districts in their respective municipalities, and the number of councillors to be elected by each district; and in laying off such districts regard shall be had to the population so as to equalize the number of councillors in that respect as far as possible.

Meeting of councillors.

111. The councillors of any district, or the councillors of any number of districts, in matters relating exclusively to such district or districts, may meet together with the warden, and they shall have full authority to manage all such matters, independent of the control of the council.

Warden, right to vote.

112. The warden or temporary chairman shall have a right to vote on all questions before the council.

Provisions, &c., of chap. 49 extended to municipalities.

113. The provisions of Chapter Forty-nine "Of Commissioners of Streets," shall extend to all municipalities; and all the powers by such Chapter vested in the sessions and grand jury, are hereby vested in the council of the municipality, and the power and authority of the commissioners are hereby vested in the council to be appointed by such council.

Jury list, revision of.

114. The municipality councils shall appoint committees 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 on the committees of the sessions.

Public property to be under management of the council.

115. Notwithstanding the ninth section of Chapter Fifty-eight, "Of Trustees of Public Property," all property of every description belonging to the municipality, or any district or districts, shall be under the management and control of the municipal council, or of the warden and the councillor or councillors of such district or districts.

Purchase of land, &c.

116. Whenever it shall become necessary to purchase land or buildings, or to erect buildings for the use of municipalities, or of townships or districts, the assessment for the amount required therefor may, if it be thought advisable, be made payable by yearly instalments, to be collected and levied on such municipalities, townships, or dis-

districts, liable therefor; but such payment shall not be made CHAP. 57.  
to extend over a longer period than five years.

117. The election for warden and councillors may be Elections.  
by ballot or otherwise, as shall be determined by the  
council.

118. Municipality councils shall appoint commissioners Commissioners  
of sewers.  
of sewers in their respective districts or counties, who  
shall have power and authority to carry out the provisions  
of Chapter Forty, "Of Commissioners of Sewers, and the  
regulating of dyked and marsh lands;" and shall also ap- Inspectors of  
lumber, &c.  
point inspectors of provisions, lumber, fuel, and other  
merchandise, under the eighty-fifth Chapter of the Third  
Series, so far as unrepealed.

119. The municipality councils shall have the same Commons.  
power and authority respecting commons as is now vested  
in the sessions, under the forty-first chapter, "Of Com-  
mons."

120. All power and authority now vested in, and all Municipality  
clerk, power,  
duties of, &c.  
duties now imposed on clerks of the peace and town clerks,  
shall be vested in, and be performed by the municipality  
clerks.

121. All the powers and authorities vested in justices Judicial district  
commissioners,  
powers of, &c.  
of the peace by the thirty-fifth Chapter, "Of the Mainte-  
nance of Bastard Children;" also by the eighty-sixth  
chapter, "Of Masters, Apprentices and Servants;" also  
by the one hundred and fifty-ninth chapter of the third  
series, "Of Offences against Religion;" also by the one  
hundred and sixtieth chapter of the same series, "Of  
Offences against Public Morals," shall be exercised by the  
judicial district commissioners of the municipality.

122. The judicial district commissioners may, on good Continuation of  
causes.  
grounds shewn by affidavit, continue a cause to the next  
monthly meeting.

123. No vote shall pass the municipality council other Votes of money.  
than the annual vote for the maintenance of the poor, or  
for ordinary annual county or district purposes, to a greater  
amount than two hundred dollars, unless the same shall  
have been sanctioned by the majority of qualified electors  
present at a public meeting, which shall have been called  
for the purpose, and presided over by the warden and one  
of the councillors; of the time and place of which meet-  
ing ten days notice shall have been given.

124. When any county or district shall hereafter be Counties to be  
laid off in muni-  
cipal townships,  
not to disturb  
existing dis-  
tricts, &c.  
incorporated the municipal council shall, without delay,  
proceed to lay the county or district off in so many and  
such municipal townships as shall be most convenient,  
and which shall not disturb the limits of existing town-  
ships, electoral districts, or poor districts, unless there be  
an unavoidable necessity to do so for the convenient divi-  
sion and arrangement of the whole county or district.

**CHAP. 57.** 125. Such division shall be made between the first annual meeting of the county council on the second Tuesday of December, and the fifteenth day of March next after, and publication shall be forthwith made in each township of the boundaries of all the proposed municipal townships, with a notice that the county council at their next half-yearly meeting will hear objections.

126. The county council shall, at the next half-yearly meeting in April, consider all objections made by petitioner or in person to the proposed township divisions, and, at their discretion, establish, alter, modify or re-arrange the same; and, having finally decided on the number and limits of the several municipal townships, shall make immediate publication thereof in each township.

127. Immediately thereupon the inhabitants of each of such municipal townships shall be a body corporate, have perpetual succession and a common seal, with power to break, renew and alter the same; and shall be capable of suing and being sued, of purchasing, acquiring and holding real and personal estate within the township 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 their powers shall be exercised by, through and in the name of the municipality of such township.

128. The municipal council of each township shall consist of five councillors; one of whom shall be presiding officer, under the name of town reeve; and the councillors and reeve shall hold office for two years, and until the election of their successors.

129. The first elections of such township councillors shall, after due notice to the respective townships for not less than ten days given by the county council, be held on the third Tuesday in November following, and at such place, and before such presiding officers as shall be appointed by the county council.

130. Succeeding biennial elections shall be held on the third Tuesday of November in each alternate year, at such place and before such presiding officers, and after such notice as the township council shall by any bye-law appoint.

131. Every election shall commence and be continued, closed and notified, as directed in the case of county councillors, by sections eight and nine; the township councillors elect being summoned to meet on the fourth Tuesday of November next after, at such place in the township as the officer presiding may appoint, until the place of meeting shall be determined by the township council; at which time and place the presiding officer and

Division, when to be made.

Number and limits, how decided.

The inhabitants of municipal townships to be bodies corporate, &c.

Municipal council.

First election of councillors, when held.

Succeeding elections, when held.

Elections how held.

councillors elect shall meet, and the councillors being sworn into office, the township council shall be organized and proceed to business. CHAP. 57.

132. At the first meeting the township councillors shall elect from among themselves a town reeve in each municipal township; and every town reeve shall *ex-officio* be a county councillor. Town reeve,  
how elected.

133. There shall annually be held a meeting of the township council on the fourth Tuesday of November, to be called the annual meeting; and such other meetings, either periodical or occasional, as the council shall appoint. The township council may severally adjourn their meetings from time to time; and the town reeve, or in case of his death or absence, any two of the town council, may at any time summon a special meeting; the places and times of meeting may be appointed by the township council by bye-law, resolution or adjournment; and the twenty-seventh section shall, as far as applicable, extend to township councils and their meetings. Meetings, how  
summoned.

134. The town reeve shall preside at all meetings, or in his absence, some member of the council to be selected for the purpose by the members present, who shall for the time have the same authority as the town reeve. President of  
meetings.

135. No person shall be entitled to vote at the election of township councillors unless he shall reside in the municipal township, and shall have so resided for the time required for residence in the case of voting for members of Assembly. Requirements  
for voting.

136. The township council, if they deem it desirable, may divide their township into five electoral wards, and appoint polling places therein, and presiding officers to receive the votes in each polling place; each ward to return one town councillor, who shall be resident within the township. Townships, by  
whom divided.

137. The township council, at the first meeting, and at each annual meeting afterwards, or at such other time as they may appoint, shall vote for each poor district in the township the sum they shall judge necessary for the support of the poor in that district, and for the purposes enumerated in the thirty-third Chapter; and shall appoint overseers of the poor for the existing poor districts within the township until such existing poor districts shall be altered by the town council, which districts they have power from time to time to alter, if they shall see fit to do so. When a poor district lies in more than one municipal township, the councils of the several municipal townships interested may respectively appoint overseers to meet the circumstances within each municipal township; and the several townships interested may make agreements with Overseers of  
poor, by whom  
elected.

**CHAP. 57.** each other according to the emergency of the case, and if unable to agree, the county council shall have power to make such order as may be agreeable to justice.

**Payment of officers.** 138. In the case of the first election, each presiding officer shall receive in full for his services two dollars, and each poll clerk employed one dollar.

**Clerks and treasurers, rules concerning.** 139. Each township municipality shall appoint a clerk and a treasurer, and shall prescribe their duties and the security to be given by each for fidelity in office; and the clerk shall perform within the municipal township all the duties by law required of town clerks.

**Portions for municipal government of counties applied to township municipalities.** 140. The following sections, as far as the same are, or may be applicable, and with such changes of terms as may be necessary to make them applicable to townships and township municipalities, shall apply to township municipalities created under this Chapter, that is to say: sections eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, nineteen, twenty, twenty-one, twenty-two, twenty-five, twenty-nine, thirty, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-nine, forty, forty-two, forty-four, forty-five, forty-six, forty-seven, fifty-four, fifty-five, sixty, sixty-four, sixty-eight, sixty-nine, seventy, seventy-one, seventy-two, seventy-three, seventy-five, seventy-six, seventy-nine, eighty, eighty-one, eighty-two, eighty-three, eighty-four, eighty-five, eighty-six, eighty-seven, eighty-eight, ninety, ninety-one, ninety-five; also, so much of sections sixty-nine, seventy-three and ninety-four, as apply to townships or township business or officers; and also the following divisions or sub-sections of the sixty-sixth section viz., I., II., III., except as relates to provincial road money, and IX. to XVI., both inclusive, as far as applicable; and also the Schedule of oaths. The township council may, by resolution or bye-law, make regulations on the subject matters of the thirty-first and thirty-second sections; also, may determine what, if any, remuneration, shall be paid to the town reeve and town councillors for their attendance and services.

**Words applicable to county construed as applicable to township.** 141. When in the above portions of this Chapter the words county, or council, or municipality, or councillor, or warden, or municipality clerk, or elector, or synonymous words occur, they shall respectively be construed to mean township or town council, or township municipality, or township councillor, or town reeve, or town clerk, as the case may be, unless otherwise expressed, or the sense forbid the change.

**Sections inconsistent with this chapter shall cease.** 142. When municipal townships shall come into operation, the powers granted under the forty-third section, and other sections inconsistent with the sections from one hundred and twenty-five to one hundred and forty-two, inclusive, shall cease.

FOR ADAPTING THE COUNTY MUNICIPALITY TO TOWNSHIP  
INCORPORATIONS.

143. After township incorporations shall be adopted, and the municipal townships laid out and notified in any incorporated county or district, the sections next following shall come into operation therein.

On township incorporation following sections to go into operation.

144. Thereafter in those counties or districts no election of county councillors shall take place.

No election of county councillors.

145. In such incorporated counties or districts, the town reeves of the several municipal townships shall constitute the municipal council; they shall continue in office two years, and until their successors are appointed, commencing their duties on the second Tuesday of December after the first and every subsequent general or bi-ennial election of town councillors, at which time the county councillors shall go out of office.

Municipal council, how elected.

146. On the second Tuesday of December after the first and after each subsequent general or bi-ennial election, the county council, and the recently elected town reeves, shall assemble at the county or district court house. The town reeves shall respectively exhibit and lodge with the county clerk a certificate of their election as township reeves, signed by the town clerk of the respective township municipalities, and they shall forthwith take the oath of office as county councillors, and then enter upon the duties of their office, and shall immediately proceed to elect by majority of votes from among themselves, a warden, who shall take the oath of office, and shall then enter upon the duties of his office, and who shall be subject to the twenty-first section; and in case the person so elected shall not qualify and serve in the said office, the county council shall choose, by a majority of votes from among themselves, a warden duly qualified, until one shall be found willing to serve.

Election of wardens.

147. The warden shall have all the authority of county councillor; he shall hold office for two years, and thereafter till his successor be appointed and has qualified; and he may be re-elected. Whenever a vacancy occurs during the term of office, by death, resignation, or otherwise, the council shall, at its first meeting thereafter, elect a warden for the remainder of the time. During the temporary absence of the warden his place may be filled by a chairman for the time being, with all the authority of the warden, to be chosen by the members present.

Authority, &c. of warden.

148. It is declared that the first municipal election in any county or district hereafter to be incorporated, is to take place on the third Tuesday of November next after

Elections, &c., when held; power of councils; relative duties of county and township councils.

**CHAP. 57.** its incorporation ; and the first meeting of the councillors then elected is to be held on the second Tuesday of December then next after. Until such first meeting of the county council, the existing authorities and mode of administering the affairs of the county, and of the townships and districts therein, are to continue in force. The organization of the county council at that meeting, and from thence until their next succeeding annual meeting, and the county council are to administer the affairs of the county and of the townships and districts therein, under and in conformity with the provisions of this Chapter.

Township councillors ; election of, powers of, &c.

149. On the third Tuesday of November next after the said first meeting of the county council, the first meeting of township councillors is to take place, instead of the election of county councillors ; and on the fourth day of November next thereafter, the first meetings of township councils are to be held, and on the second day of December then next following, being the annual meeting of the county council, the newly constituted county council shall be organized, and the administration of the county and the townships shall be separated, and all the powers and jurisdiction of township affairs, which are given to the county council and which are given to the township councils, shall after no longer be exercised by the county council, but shall exclusively be vested in and be exercised by township municipalities ; and all other the powers and jurisdiction given to the county municipalities herein given to the township municipalities, shall be exclusively vested in and exercised by the township municipalities ; provided that assessors, collectors and other ministerial officers, having duties commenced, and not completed, on the occasion of an order for such changes of authority and jurisdiction, shall continue to have legal authority for the completion of such duties unless the council coming into authority shall order otherwise ; and they shall make return, and account to the county council according to its direction, and otherwise as directed by the authority.

#### SCHEDULE OF OATHS.

*Oath of office, to be taken by all persons appointed to any office or duty under this Chapter for which no special provision is made.*

I, A. B., do solemnly swear [or affirm, where the person is not entitled to affirm,] that I will truly, faithfully and lawfully, to the best of my knowledge and ability, discharge the office of [inserting the name of the office, as]

*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.

*Oath of qualification.*

I, A. B., do swear, [*or affirm*] that I am a natural born [*or naturalized*] subject of Her Majesty, and that I am by law qualified to be elected to the office of —, in the municipality of — according to the true intent of Chapter Fifty-seven of the Revised Statutes, and that a correct account, to the best of my knowledge and belief, of the property in respect whereof I claim to be so qualified, is contained in the schedule hereunto annexed. So help me God.

SCHEDULE A.

*County of King's.*

Each electoral district shall return two councillors, except the Aylesford district, which shall return four councillors.

*County of Queen's.*

Three councillors to be returned for electoral district number one.

*County of Yarmouth.*

In the district of Yarmouth three councillors shall be returned for electoral district number Two, and one councillor for electoral district number Four.



CHAP. 58.

## TITLE XIV.

OF CERTAIN MUNICIPAL AND LOCAL  
REGULATIONS.

## CHAPTER 58.

## OF TRUSTEES OF PUBLIC PROPERTY.

Trustees of public property appointed by sessions; record to be kept; trustees a body corporate.

1. The grand jury in each county or district shall commend six persons resident therein, out of whom sessions shall appoint three to be trustees of public property; and the sessions upon the recommendation of grand jury may remove them or any of them; and vacancies shall be supplied by the grand jury recommending double the number of persons necessary to supply the same, out of whom the sessions shall appoint the number required. The Clerk of the Peace shall keep a record of such appointments, removals and vacancies, and the dates thereof. Such trustees shall be a body corporate by the name of "The Trustees of Public Property for the County [or District] of \_\_\_\_\_."

Lands and property vested in trustees.

2. 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, shall vest in such trustees on their appointment, for the public uses for which the same may have been originally intended.

Lands leased subject to control of sessions.

3. All such lands and buildings shall be leased and managed by the trustees under and subject to the control of the sessions.

Leases limited to seven years.

4. No lease shall be made hereunder for a longer period than seven years.

Bye-laws, how made.

5. The trustees may make bye-laws for the better regulation of such lands and buildings and affix penalties for breach thereof; but no bye-law shall be in force until approved by the sessions and filed with the Clerk of the Peace.

6. The trustees shall annually render their accounts in writing to the sessions to be by them audited, and when approved they shall be filed by the Clerk of the Peace. **CHAP. 59.**

Accounts of trustees rendered annually. Penalties and rents, how recovered.

7. Penalties incurred under the bye-laws, and rents due to the trustees, may be recovered by them in like manner as if they were private debts due them; and the trustees shall pay into the county treasury all moneys that they may receive hereunder.

8. The expenses of the trustees in the execution of the trust, shall when approved by the sessions form a county charge.

Expenses of trustees county charge.

9. Nothing herein 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 jail.

Lands and property exempted from operation of chapter.

10. The court of sessions in each county, where school lands are situate not by law vested in the school trustees of any section, shall annually appoint trustees of such lands.

Trustees of school lands how appointed in certain cases.

11. Whenever any vacancy shall occur by death or removal from the county, incompetency, or refusal to act of any trustees already appointed to take charge of any school lands in any township or district in this Province, the sessions may appoint trustees to fill such vacancy who shall have the same power as the original trustees.

Vacancies, how filled.

## CHAPTER 59.

### OF SUPERVISORS OF PUBLIC GROUNDS.

1. The grand jury in each county or district shall, on the application of twenty freeholders of any township, appoint six persons resident in such township, out of whom the sessions shall appoint three to be Supervisors of Public Grounds; and the sessions, upon the recommendation of the grand jury, may remove them, or any of them; and vacancies shall be supplied by the grand jury recommending double the number of persons necessary to supply the same, out of whom the sessions shall appoint the number

Supervisors, how appointed.

**CHAP. 59.** required; and the Clerk of the Peace 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 Township 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, and of all commons and other lands not belonging to the county or district 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 of, how made, accounts filed; rent, how applied.

3. The supervisors may, by direction of the grand jury and sessions, lease any such lands not required for public uses for any period not exceeding seven years; and they shall annually render to the sessions an account of moneys by them received for rents and of expenses connected with the letting, to be audited by the grand jury and sessions and then filed in the office of the Clerk of the Peace; 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.

Lands and property excepted from operation of chapter.

4. Nothing in the preceding sections contained shall 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.

Encroachments upon roads, how dealt with; proceedings in cases of dispute.

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 sessions, and the sessions shall make such order in relation thereto as may be deemed proper. CHAP. 59.

6. If any person shall not obey the order of the Supervisor or sessions delivered to him in writing within thirty days after receiving the same, he shall 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.

Fine for disobeying supervisor's or sessions' order.

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 by the parties entitled thereto as if it were a private debt of the like amount.

Expenses, how borne and recovered.

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 sessions under the hand of the Clerk of the Peace, 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.

Order of supervisors, how proved.

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 Peace to be filed in his office.

Record to be signed and filed.

10. Any person dissatisfied with the order of the Supervisors or of the sessions 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.

Appeal from order.

11. If judgment on appeal shall confirm the order, then the costs of appeal shall be paid by the appellant, and

Costs of appeal, how paid if order confirmed.

**CHAP. 59.** 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 county charge, and be refunded to them, together with their own reasonable charges.

Supervisors may make order for widening 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 sessions.

Proceedings to be had at sessions.

14. The Supervisors shall at the next sessions submit to the court 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 court 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.

Sessions may appoint three freeholders to lay off road; subsequent proceedings.

15. In case no agreement shall have been made, or the sessions 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 sessions, and the third to be nominated by the sessions; 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 county charge; but no fencing shall be paid for except as directed under the last mentioned Chapter.

Width of road.

16. No road shall be opened under the last three sections to a greater extent than sixty-six feet.

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.

CHAP. 60.  
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 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, but shall in no case apply to roads which have been abandoned.

Roads affected  
by this chapter

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## CHAPTER 60.

### OF SUBSCRIPTIONS TO PUBLIC WORKS.

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.

Subscribers to  
public works  
liable without  
consideration in  
agreement.

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

Commissioner,  
&c., may enforce  
payment of sub-  
scription after  
notice, &c.

- CHAP. 61.** 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.
- Provide.**
- 
- Moneys recovered, 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 PUBLIC MARKETS.

Existing public markets confirmed; sessions may establish others.

Sessions to appoint officers, make bye-laws, and generally control markets.

Rents and penalties how applied.

Accounts rendered annually.

1. Public markets where now by law established are confirmed, and upon the recommendation of the grand jury, the sessions may establish new public markets, and may procure and fit up a market house as directed in Chapter Twenty-one, "Of County Assessments."

2. The sessions 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 sessions. The sessions shall also establish the pay of such keepers and clerks, and fix the rates of stalls or standings in the markets, and make bye-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.

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 sessions to the repairs of the market house.

4. The keepers and clerks shall annually render their accounts in writing to the sessions, to be by them audited; and when approved they shall be filed by the Clerk of the Peace.

## CHAPTER 62.

## OF FIRES AND FIREWARDS.

1. The sessions 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; to be sworn and have staffs as badges of office.

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 sessions; and the sessions 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 endeavours 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 be liable to a penalty not exceeding eight dollars.

Firewards, their duties and powers at fires.

Penalty for disobedience of their orders.

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 for every offence forfeit a sum not exceeding twenty dollars.

Fine for breaking open buildings without proper authority.

5. The firewards shall from time to time report to the sessions 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 sessions 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

Duty of firewards as regards fire implements.



**CHAP. 62.** 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 forfeit a like sum.

Firemen, how appointed; their duties.

7. The sessions 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.

Fireman appointed by firewards to have power of fireward.

8. One of such firemen to be appointed by the firewards 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.

Fire constables, how appointed; their duties.

9. The sessions 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 forfeit a sum not exceeding eight dollars.

Penalty for neglect.

General sessions may assess for fire engines.

10. The general sessions for any county 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 general sessions, at such times and in such proportions as such general sessions shall direct.

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Property liable to assessment; assessors.

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 county rates are collected and their payment enforced.

Collectors; payment, how enforced.

12. Such collectors shall pay over the moneys by them collected to the County Treasurer; and the County 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 county 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 sessions 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 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.

Enginemen, how appointed; their duties.

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.

Engine man appointed by firewards to have power of fireward.

16. Firemen and enginemen shall be exempted from the performance of statute labor, except in respect of cattle and teams and 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.

Firemen and enginemen exempted from certain public duties.

17. Upon any vacancy among the firemen or enginemen the same shall be at once reported by the captain to the sessions, that the vacancy may be supplied.

Vacancies, how supplied.

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, how appointed.

19. Licensed chimney sweepers shall enter into bonds with two sureties to be approved by the firewards, for

Chimney sweepers to give bonds.

**CHAP. 62.** 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 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 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.

Penalty for neglect of duty.

Fines for neglect of regulations respecting sweeping of chimneys.

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 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 forfeit twenty dollars.

Power of firewards to enter buildings and make orders respecting dangerous chimneys.

Penalties for refusing admission.

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 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 to remove dangerous materials.

Penalties incurred, how enforced.

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 forfeit eight dollars in addition to the expense of

arrying out the direction of the firewards, to be recovered CHAP. 62.  
 in the name of the firewards or of any of them; and if the  
 penalty and expenses shall not be paid with costs, the  
 offender may be imprisoned for a period not exceeding ten  
 days.

23. No person shall keep at any one time in any one Provisions re-  
 specting gun-  
 powder.  
 place within the limits of the firewards, or in any vessel or  
 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  
 their enforce-  
 ment.  
 thereof he shall forfeit one dollar for every pound of such  
 gunpowder over twenty-five pounds, to be recovered in  
 the name of the firewards or any of them: but this pro-  
 vision 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 com-  
 menced within three months after the offence shall be  
 committed.

24. Any justice of the peace upon complaint on oath Warrant to issue  
 and places bro-  
 ken open to  
 search for dan-  
 gerous quantities  
 of gunpowder;  
 proceedings  
 thereunder.  
 by a fireward that he has reasonable cause to suspect that  
 dangerous quantities of gunpowder are kept in any place  
 contrary to the provisions of the last section, may issue his  
 warrant to search therefor in the day time; and if admit-  
 tance under the warrant shall be refused, and such refusal  
 shall be made appear on oath, the justice may grant a  
 further warrant to break open the place where such gun-  
 powder is supposed to be deposited: and if upon any  
 search a greater quantity than twenty-five pounds of gun-  
 powder 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.

25. The sessions may make regulations to prevent the Sessions to make  
 regulations rela-  
 tive to fires.  
 occurrence, increase or spreading of fires, and to prevent  
 the unnecessary ringing of fire bells, or the destruction  
 thereof or of their appurtenances, and shall have the man-  
 agement 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.

26. If any person shall wilfully destroy or injure any Fine for injuring  
 public wells, &c.  
 public well or pump or fire plug, or any engine or fire im-  
 plements within the limits to which this Chapter extends,  
 he shall forfeit twenty dollars; and in default of payment,  
 and no effects being found whereon to levy, may be impris-  
 oned for not more than ten days.

27. The firewards shall annually appoint a chairman Chairman of fire-  
 wards, how ap-  
 pointed; office,  
 duties, &c.  
 who shall act as treasurer of the board, and shall submit  
 his accounts annually to the firewards to be audited and

**CHAP. 62.** signed by them, and submitted to the sessions for examination and approval.

Application of penalties.

Fire implements, how provided and repaired.

Expenses, how levied and collected.

Proceedings on investigation as to origin of fire.

Fireward defined.

28. All penalties recovered hereunder shall be applied under the direction of the sessions towards the purchase and keeping in repair of engines and fire implements, the sinking and keeping in repair of pumps and wells generally in carrying out the objects of this Chapter the sessions may at any time direct new engines and 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 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 same shall be incurred, in the same manner as the poor rate assessed, levied and collected, and shall be paid over to the County Treasurer to be applied under the direction of the sessions for the purposes contemplated.

29. Whenever any building or property shall be injured or destroyed by fire and the cause or origin thereof is not known, the Mayor of the City of Halifax within the City of Halifax, and the Custos or 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 Mayor or more aldermen in the City of Halifax, 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 warrants under their hands and seals, and to examine them on 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.

30. The word "firewards" when used in this Chapter shall include one or more of them, unless otherwise expressed or repugnant to the context.

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## CHAPTER 63.

## OF THE DISCHARGE OF FIREARMS AND FIREWORKS.

1. If any person shall knowingly and unnecessarily discharge any firearms within the City of Halifax, or within any town or village, or within one hundred yards of any person riding or driving, he shall for every offence forfeit two dollars on summary conviction before a justice of the peace; and in default of payment shall be imprisoned for twenty-four hours.

Fine for unnecessary discharge of firearms.

2. If any person shall wantonly throw any fireworks, or permit the same to be thrown, into any street, thoroughfare or passage, or into any building, or shall make any bonfire within one hundred yards of any building, he shall for every offence forfeit eight dollars, and in default of payment shall be imprisoned for a period not exceeding fourteen days.

Fine for improperly throwing fireworks or making bonfires.

3. Prosecutions under this Chapter must be commenced within eight days after the offence committed.

Prosecutions within eight days.

## CHAPTER 64.

## OF THE TRANSPORTATION AND USE OF GUNPOWDER.

1. No person shall convey by land more than one ton of gunpowder at one time.

Conveyance of gunpowder by land.

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.

Protection where over fifty lbs. in one cart.

3. No carriage conveying gunpowder shall be stopped less than twenty rods from any dwelling-house.

Carts, where to stop.

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.

Metallic substances not to be on cart with powder.

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.

Quantities over fifty pounds, how secured for carriage.

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.

Quantities over twenty-five pounds, how secured.

**CHAP. 65.** 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.

Carriage of gunpowder for Her Majesty not affected.

Precautions in blasting within 100 feet from any street, &c.

8. Nothing in this Chapter contained shall affect the carriage of gunpowder for Her Majesty's service.

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.

Fine, how recovered.

Person blasting to be responsible for damages.

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; it 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.

## CHAPTER 65.

### OF BURNING WOODS AND MARSHES.

Sessions to make regulations for burning woods, marshes, &c.

Limitation of prosecutions.

Imprisonment on conviction, for want of goods.

Offender liable for damages.

1. The sessions shall make regulations for preventing damage by setting fire to and burning woods, underbrush and marsh lands, at unseasonable times, and shall affix penalties for breach thereof not exceeding eighty dollars.

2. Prosecutions under this Chapter must be commenced within three months after the offence committed.

3. If any person convicted under this Chapter shall not pay the penalty and costs, and shall have no goods whereon a levy can be made, he may be imprisoned for a term not exceeding one day for every one dollar of the amount of the judgment, unless the same shall be sooner paid.

4. Any person violating the provisions of this Chapter shall be liable to the person injured for all damage resulting from such violation.

## CHAPTER 66.

CHAP. 66.

OF THE CONVEYING OF TIMBER AND LUMBER ON RIVERS AND  
THE REMOVAL OF OBSTRUCTIONS THEREFROM.

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, which application shall be first read at the sessions and approved of by the grand jury and sessions, 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 Peace 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.

Commissioners,  
how appointed;  
their jurisdic-  
tion defined.

2. The Commissioners appointed by the sessions may remove from the river all obstructions within the limits of their authority, and may erect wing-dams 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 for that purpose may enter upon public or private lands, doing no unnecessary damage; 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 sawdust from saw mills; and the sessions may impose penalties for the violation of such regulations, and may direct the method of recovering the same.

Powers of com-  
missioners.

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.

Commissioners  
may borrow  
money.

4. 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 sessions 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.



**CHAP. 66.** 5. The commissioners shall annually submit an account of their expenditure and proceedings, and of the tolls collected, to the sessions for audit; and when approved it shall be filed by the Clerk of the Peace.

Accounts submitted annually and audited by the sessions.

Operation of chapter restricted.

6. 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.

Sessions empowered to make regulations.

7. The sessions 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, 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 mill dam.

Logs, &c., may be brought down rivers under regulations.

8. 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.

9. The word "river" when used in this Chapter shall include streams running into any river.

Not to contravene Canada law.

10. Nothing herein shall be construed to contravene any legislation (*intra vires*) of the Parliament of Canada.

## CHAPTER 67.

CHAP. 67.

## OF PUBLIC EXHIBITIONS.

1. The clerk of the license, 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 county where granted.

License for exhibition how obtained.

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.

Where clerk of license absent or living at distance.

3. The clerk of the licenses or justices granting any such license shall be entitled to receive therefor a fee of fifty cents.

Fee on granting license.

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.

Fine for exhibition without license, how recovered.

5. The clerk of the licenses shall, within ten days before every sitting of the sessions, pay over to the County Treasurer for county purposes all duties and penalties by him received under this Chapter.

Clerk of licenses to pay over fines.

6. The provisions of this Chapter shall not extend to the City of Halifax.

City of Halifax exempted.

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## CHAPTER 68.

## OF STRAY HORSES AND CATTLE.

Stray horses, cattle, &c., how to be dealt with.

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 whom the owner thereof is unknown, such person shall 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 the 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 thereon so as the owner may be enabled to recognize it by such description; and shall at the foot thereof write a notice of the time and place of finding such animal, and also of the place where the same is detained.

Town clerk's duty 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 the 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 August 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 thirtieth 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 thereof, unless claimed by the owner of the animal within twelve months after sale, in which case it shall be paid to the owner.

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.

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Fees payable where property claimed before sale.

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.

Dispute as to ownership or expenses, how settled.

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.

Fines for detaining cattle and not proceeding as in this chapter directed.

8. The sessions of any county or district 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.

Sessions may make regulations, and affix penalties.

9. The general or any special sessions of the peace for any county or district may make bye-laws to prevent the running at large, on any public street, square, common or other public grounds within such county or district 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 bye-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. This section shall not apply to the City of Halifax.

Sessions to make bye-laws and affix penalties.

Limited.

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## CHAPTER 69.

### OF THE GOING AT LARGE OF CERTAIN ANIMALS.

1. The sessions shall make regulations for preventing 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.

Sessions shall make regulations respecting infected cattle, geese, dogs, &c.

**CHAP. 71.** 2. If judgment be given for any such penalty and the defendant shall not pay the same, and shall not have goods whereon the same may be levied, he may be imprisoned for a period not exceeding one day for every one dollar of the penalty.

Imprisonment for want of goods to pay fine.

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## CHAPTER 70.

### OF THE GATHERING OF SEA MANURE.

Sessions may make regulations respecting sea manure.

1. The sessions 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 if any person shall transgress such regulations, he shall for every 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.

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## CHAPTER 71.

### OF COASTING ON HIGHWAYS, ROADS OVER ICE, AND GUIDEBOARDS.

Sessions may make regulations respecting coasting.

1. The sessions 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.

Parents and masters responsible for penalties.

2. The parents of minors and the masters of apprentices who shall transgress any such regulation shall be liable to the penalty therefor.

Sessions may make regulations respecting tracks and roads over the ice.

3. The sessions 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 county purposes.

4. The expenses incurred in putting down, continuing, repairing and protecting such marks, shall form a county charge. CHAP. 72.  
Expenses, how paid.

5. Whenever the general sessions or a special sessions called for the purpose, 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 names, &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.

## CHAPTER 72.

### OF THE TAXATION OF DOGS.

1. The sessions upon the recommendation of the grand jury may make regulations relative to the taxation of dogs, and may fix the amount to be paid annually by owners of dogs, not exceeding one dollar for each dog; and such regulations shall be published throughout the county for thirty days before they shall come into operation. Sessions may make regulations relative to taxation of dogs.

2. Dogs found chasing or worrying sheep may be killed; and the owners of such dogs shall have no right of action against the persons killing the same. Dogs chasing sheep may be killed.

3. The owners of dogs that have been found chasing 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. Penalty upon owners.

CHAP. 73.

## TITLE XV.

## OF CERTAIN BIRDS AND ANIMALS.

## CHAPTER 73.

## OF THE PRESERVATION OF USEFUL BIRDS AND ANIMALS.

No person shall kill or have in his possession partridge, woodcock or snipe out of season.

1. No person shall take or kill, or attempt to take or kill, any partridge between the first days of January and September in any year, or shall sell, buy, or have in his possession, any partridge so taken or killed, between the said last mentioned days each inclusive, or shall take or kill, or attempt to take or kill, or have in his possession, any woodcock or snipe, between the first days of March and September in any year.

Fine for offence.

2. Every offender shall forfeit two dollars for each offence; and the killing, taking, or having, as aforesaid, each partridge, snipe, or woodcock, shall be deemed to constitute a separate offence.

Moose and caribou, how many may be killed. No snares.

3. No one person during any one year or season shall kill more than five moose or caribou; and no person shall set traps or snares for catching moose or caribou.

Moose killed, &c., only during Sept., Oct., Nov., and Dec.

4. No person shall kill, or pursue with intent to kill, any moose, save only during the months of September, October, November, and December, or shall expose for sale, or have in his possession, any green moose skin, or fresh moose meat, save only in the months aforesaid, and the first five days in the month of January; and no person shall kill, or pursue with intent to kill, any caribou between the first days of March and September inclusive in any year.

Caribou only between 1st March and Sept.

Flesh to be carried out of woods within what time.

5. Any person or party of hunters who may kill moose or caribou shall carry the flesh thereof out of the woods within three days after killing the animal, during the months of September and October, and within fourteen days thereafter during the months of November and December.

Penalty for violation of three last sections.

6. Any person violating any one of the three next preceding sections shall be liable to a penalty of not less than twenty dollars, nor more than fifty dollars for each offence; to be recovered by any person who may sue for the same. And in case the amount of such penalty and costs be not paid, and the defendant in such prosecution be committed to jail, he shall not be admitted to the benefit of Chapter 137 of the Revised Statutes, Third Series, relating to insol-

vent debtors, until after an imprisonment, without jail limits, of one day for each dollar of such penalty and costs. CHAP. 73.

7. 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. Export of moose or caribou hides prohibited.

8. Any justice of the peace, constable or revenue officer may seize hides attempted to be exported under section seven; 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. Hides about to be exported may be seized by J.P. &c.

9. If the claimant be dissatisfied with the decision of the justice he may appeal to the Supreme Court; and the appeal shall be heard and determined in a summary way by any of the judges of such Court. If not claimed, &c., sold.

10. 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. Bond.

11. The proceeds of the sale under section eight shall, after deducting the expenses of the sale and justice's fees, be paid to the informant or officer who seized the hides. Proceeds of sale.

12. No snares shall be set for hares between the first days of March and September in any year, under a penalty of two dollars for each offence; and all snares shall be taken up during the aforesaid close season, under a penalty of two dollars for each snare not removed by the parties setting the same, on or before the first day of March, to be recovered in the same manner as in the seventh section. No snares for hares between 1st March and September.

13. 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. Pheasants not to be killed, sold, &c.

14. 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. Presumption of guilt.

15. No person shall take or kill the otter, the mink or the musquash, between the first day of May and the first Otter, mink, &c., when not to be killed.



**CHAP. 73.** day of November in any year ; and no person shall take or kill any other animal, valuable only for its fur, between the fifteenth day of March and the fifteenth day of November in any year.

Penalty for violation of three preceding sections.

16. Every person offending against the three next preceding sections shall for each such offence forfeit a sum not exceeding eight dollars, to be recovered in the same manner in which similar amounts are now by law recoverable, and to be appropriated to the use of the prosecutor.

Sessions may make orders for preservation of moose, &c.

17. No person shall set any snare or trap for the destruction of moose ; and the sessions may make orders for the preservation of moose and for preventing the setting of snares or traps for catching them, and may affix penalties not to exceed twenty dollars for the breach of such orders respectively.

Snares destroyed.

18. Any person may destroy any snare made or existing in violation of such orders.

Imprisonment, where fines not paid.

19. If the penalties incurred under the first and second sections be not paid with costs, the offender shall be committed to jail, there to remain one day for every one dollar thereof, or until the amount be paid.

Killing robins, &c., unlawful.

20. 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, of such birds, when killed, shall hereafter be unlawful.

Penalty.

21. Every person offending against this Chapter, by the killing of any such birds, or the selling, or offering for sale, or having in possession, of the dead bodies of any such birds, shall, for each offence, forfeit one dollar, in addition to the sum of ten cents for each of such birds killed, sold, offered for sale, or had in possession, to be recovered by any one who will sue for the same, in the same manner as debts of a similar amount are now recoverable, and to be appropriated to the use of the prosecutor.

Recovery of, &c.

Exceptions.

22. This Chapter shall not apply to birds killed for preservation, as specimens of natural history.

Any person may catch minks for breeding.

23. Any person may catch alive at any season of the year any number of minks, for the purpose of breeding and preserving them in any box trap or any modification of the same.

To be personal property.

24. Hereafter minks when caught and kept under the authority of this Chapter shall be considered personal property of a private nature.

Sessions to make rules, and appoint officers under Chapter.

25. The general sessions of the peace in every county and district are hereby empowered to make all such rules and regulations as to them shall seem necessary or expedient for the purpose of carrying out the provisions of this Chapter. They shall also have power to appoint persons to carry the same into effect.

## CHAP. 75.

## CHAPTER 74.

## OF THE DESTRUCTION OF NOXIOUS ANIMALS.

1. The sessions may establish rules and appoint rewards Sessions may offer rewards for killing bears, &c. for encouraging the killing of bears, loup-cerviers, wild-cats and wolves; and such rewards shall be a county charge.

2. Every person killing a wolf within the Province and intending to claim a bounty therefor, shall produce the head of the animal with the skin and ears entire, to a justice of the peace of the county where taken, and shall take oath of the fact in writing, stating the time and place where such wolf was taken, and shall submit to any further examination required by such justice; but no bounty shall be allowed for any wolf taken out of the womb of the mother. Proceedings for obtaining provincial bounty for killing a wolf.

3. If the justice shall be satisfied of the truth of the statement, he shall cut off and burn the ears and scalp of each wolf, and deliver to the person applying a certificate of the facts, annexing thereto the affidavit taken; and shall number the certificates issued by him each year, and mark the number and year thereon. Justice's duty on application; his certificate.

4. Upon the certificate with the affidavit annexed being transmitted to the office of the Provincial Secretary, a bounty of twenty dollars shall be paid out of the treasury to the party entitled. Bounty from treasury.

## TITLE XVI.

## OF LICENSES.

## CHAPTER 75.

## OF LICENSES FOR THE SALE OF INTOXICATING LIQUORS.

1. The sessions in each county, upon the recommendation of the grand jury, 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 sessions may direct, for the faithful performance of their duties, and Clerks of the license, appointment of, &c.

**CHAP. 75.** shall be sworn into office; and such officers shall be appointed, although no licenses be granted in the county. If the person so appointed shall die, refuse to act, remove from the county, or from any other cause whatever shall be unable to act, a special sessions for the county shall, upon the requisition of any three freeholders addressed to the Custos requiring him to call such special sessions, meet and appoint a suitable person to fill such office, subject to the conditions above mentioned.

Intoxicating  
liquors, how sold  
without license.

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 6 of this Chapter.

Licenses, how  
granted.

3. Licenses for the sale of intoxicating liquors shall only be granted by the sessions upon the recommendation of the grand jury, concurred in by two-thirds of the members of the grand jury present, accompanied by a petition from 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 court, and such petition and recommendation from the grand jury may be rejected in whole or in part by the sessions.

Clerk of license  
or J. P. empow-  
ered to enter,  
&c., premises of  
persons suspect-  
ed of violating  
license law.

4. 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 con-

Penalty for ob-  
structing.

victed shall be imprisoned in the gaol of the county or district 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 county or district in which the cause of action originated towards the general funds of such county or district. CHAP. 75.

5. Any clerk of the license, or any person authorized by him, may seize and destroy all intoxicating liquors found exposed or intended for sale within the limits of any proclaimed gold district; and for that purpose, if necessary, upon reasonable grounds of suspicion, may enter into any house or building within such limits and seize, take away or destroy all such intoxicating liquors. And no licenses shall hereafter be granted in any proclaimed gold district. Clerk of license may destroy liquors for sale in gold district.

6. 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. No license granted for gold district.

7. 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. Penalties.

8. Licenses shall be in the form in Schedule A. Licenses restricted.

9. The courts of sessions in the various counties, 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 Peace for issuing the same, and also the commission to be paid to the Clerk of License for collecting and paying over such debts. Forms of.

10. Every person to whom a license shall be granted shall, before receiving the same and within fifteen days after the sitting of the sessions granting the same, pay down the whole duties, and shall also enter into a 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 Peace. Duty, how fixed.

11. License free of duty, or upon payment of a less 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. Duty, when paid.

Bond.

Free licenses.

**CHAP. 75.** 12. No justice of the peace or coroner shall hold a tavern or shop license.

Justices and coroners prohibited.  
Registry of licenses.

13. The Clerk of the Peace and clerk of the 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 sessions and grand jury.

Tavern must have sign.

14. If any person holding a tavern license shall not, 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 twenty dollars; and the neglect to do so for every ten days after every conviction, shall be deemed a fresh offence.

Penalty.

Penalty for sign when no license.

15. 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 every continuation of such inscription for ten days after conviction, shall be deemed a fresh offence.

Penalties for not keeping order.

16. 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.

Gambling, &c.

Drinking on Sunday.

Exposing goods for sale.

Not having accommodation.

Selling liquor on Sunday.

17. 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.

Shop license, restrictions of, &c.

18. 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 drank on the premises where sold, or any such premises to be opened on Sunday, under the same penalty as that mentioned in the fourteenth section.

Charges for liquor not recoverable if under one gallon.

19. No person shall recover or be allowed to set off any charge for intoxicating liquors in any quantity less

one gallon, delivered at one and the same time; and specialties, bills, notes, agreements or accounts, stated, CHAP. 75.

on, or made in whole or in part for or to secure any charge, shall be void; but nothing herein contained Exceptions. 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 or motion for non-suit.

1. 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 a 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 ten dollars. Penalty.

2. Married women, servants, or other persons convicted in any breach of this Chapter, shall be liable to the penalty thereto attaching, as if they were unmarried women or principals; provided the husbands or masters shall have been prosecuted for the same offence: and upon 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. Penalty against married women, &c.

3. The clerks of the licenses, except in the City of New York, shall render a half-yearly account to the County Treasurer of all duties collected, and of all penalties or portions thereof payable into the county treasury, which they shall have come into their hands, together with a statement of all judgments obtained for penalties so far as the same have come to their knowledge and which may be satisfied; and shall immediately, on the receipt of any money due, pay the same duties, penalties, or portions of penalties, pay the same over to the County Treasurer, deducting the commis- Proviso.

4. Penalties under this Chapter may be recovered in the name of any of the clerks of license in their respective districts, 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 of Schedule C; and upon conviction, such conviction shall be indorsed upon or annexed to the original summons in the form of Schedule D, and the same, when signed by the clerk, shall be held a valid conviction, and thereupon an Penalties, how recovered. Forms.

- CHAP. 75.** 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 may be amended at the trial below or on an appeal; but the Clerk of License, on information being given to him in writing, on having his costs guaranteed by two or more responsible parties, shall be compelled to prosecute the 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.
- Amendment of summons.** Clerk, when compelled to prosecute.
- Penalties, disposal of.** **Except Halifax.** 24. Penalties under this Chapter, except as provided in the preceding section, shall be paid one-half to the person suing, and the other half into the county treasury, except in the City of Halifax, where the same shall be paid to the officer now by law authorized to receive such moneys.
- Appeals, how granted.** 25. 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.
- Appeal bond.** **Certiorari, bonds for.** 26. 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.
- New trial.** **Bonds, form of.** 27. 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
- Penalty for non-attendance of witnesses.**
- How levied.**

and detained there for the same period of time as if CHAP. 75.  
 had been guilty of a first offence for selling liquors  
 out license; but no person shall be obliged to attend  
 ve evidence on any such trial until he shall have been  
 his fees for travel and attendance.

Must be paid  
fees.

In suits instituted by the Clerk of the Licenses, Prosecutor, how  
indemnified.  
 e the justice before whom the trial is had shall give  
 nent for the prosecution, or, if he give judgment for  
 efendant, shall certify there was reasonable ground  
 ommencing the suit, the prosecutor shall be fully in-  
 ified for all costs and expenses on both sides, to be  
 l by a judge of the Supreme Court, and to be levied  
 assessment or amercement on the county.

Any person who shall bribe or attempt to bribe, Penalty for in-  
terfering with  
witness.  
 idate, or attempt to intimidate a witness, with a view  
 rder him from giving testimony as to any violation of  
 hapter, shall be liable to a penalty of not less than  
 ty dollars.

Any justice of the peace, who shall purchase in- Penalty on jus-  
tice.  
 ating liquors in any quantity less than ten gallons from  
 son not holding a tavern license, shall forfeit twenty  
 s, to be recovered in the name of the Crown or of any  
 n who will prosecute therefor, and shall be liable to  
 t his commission.

No judgment shall be withheld on account of Variance not to  
affect judgment.  
 nce between the proof and the summons, if it appears  
 e satisfaction of the justices trying the cause that the  
 idant was aware of the real cause of complaint; but, Justices may  
continue cause.  
 o justices see fit for this cause, they may continue the  
 for another day; and no judgment shall be set aside  
 y variance or for any formal objection.

Any sale of intoxicating liquors made on the pre- Sale by wife, &c.  
 of any person by the wife, child, or servant of such  
 n, shall be considered presumptively as the act of the  
 and, parent, or master, and shall be punished in the  
 way as if such sale had been made by such hus-  
 parent, or master in person; and the burthen of  
 of innocence shall be thrown on such husband,  
 nt, or master.

No mail carrier shall knowingly carry in the same Mail carrier not  
to carry liquor.  
 on or vehicle with Her Majesty's mails any intoxica-  
 liquors; under a penalty of not less than four dollars  
 ore than twenty dollars for each offence.

Any person holding a license who shall sell or Sale to a minor  
or indian.  
 er intoxicating liquor to a minor or to an Indian,  
 proof thereof before a justice of the peace, shall  
 it his license, and shall not again be capable of holding  
 nse; and in case of sale to an Indian shall also be  
 to a penalty of twenty dollars for each offence, and



**CHAP. 75.** in default of payment shall be imprisoned for a term of not less than ten days or more than twenty days.

Penalty for selling to intemperate persons.

35. 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.

Unnecessary statements in summons.

36. 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 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.

What may be set up as a defence.

No particulars required.

Proof of sale to persons not named.

37. 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 addi-

Defendant entitled to continuance.

al proof in support of the prosecution, as well as proof **CHAP. 75.**  
 but the defence.

No person imprisoned under execution issued upon **Prisoners not**  
 judgment for a breach of this Chapter, shall be enti- **entitled to goal**  
 to jail limits.

Prosecutions for offences against this Chapter, or **Limitation of**  
 brought on any appeal bond, shall be commenced **actions.**  
 in six months, and the Clerk of the License or any **Action on appeal**  
 state prosecutor may bring an action on such appeal **bond.**  
 without special leave obtained therefor.

In case the constable or officer to whom a sum- **Service of sum-**  
 mons is delivered to be served shall not be able to effect **mons, what suf-**  
 rsonal service, it shall be a sufficient service of the **ficient.**  
 to leave it at the dwelling house of the defendant; **Proviso.**  
 provided that the officer makes an affidavit that he believes  
 the defendant concealed himself, or in any way  
 avored to escape service of such summons.

In any county or township in which licenses for the **Sessions shall**  
 of intoxicating liquors are not granted, it shall be the **appoint member**  
 of the general sessions for such county or township, **of temperance**  
 on the recommendation of the grand jury, to appoint for **organization to**  
 township one suitable person,—who shall be a member **sell liquors.**

of good standing of a temperance organization, established **Purpose of sale.**  
 in the township for which he shall be appointed, and shall  
 hold office only so long as he shall maintain such standing,  
 and shall be called Agent for the Sale of Alcoholic Liquors,—to

procure and sell such alcoholic liquors as may be required for **To keep list and**  
 medicinal, mechanical, manufacturing, and other purposes, **make return.**  
 and shall keep a list of the names of persons purchasing  
 liquor, the quality and description purchased by each per-  
 son, and the purpose to which such liquor is intended to be  
 used, and shall make a return of the same, under oath,  
 at the general sessions by which he is appointed, during  
 each year that he shall hold office; and he shall receive

compensation for his services, and shall conform to **Compensation.**  
 the 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 general sessions appointing him  
 may prescribe. No such agent shall have interest in such  
 liquors, nor in any profits arising from the sale.

It shall be lawful for the chief superintendent of **Regulations.**  
 railways, or any person authorized by him, to seize and **Penalties.**  
 destroy all intoxicating liquors found exposed or intended  
 for sale within the limits of the railway; and for that pur-  
 pose, if necessary, upon reasonable ground of suspicion,  
 he may lawfully enter into any house or building within such  
 limits, and to seize and take away all such intoxicating  
 liquors.

It shall be lawful for the chief superintendent of **Shall have no**  
 railways, or any person authorized by him, to seize and **interest.**  
 destroy all intoxicating liquors found exposed or intended  
 for sale within the limits of the railway; and for that pur-  
 pose, if necessary, upon reasonable ground of suspicion,  
 he may lawfully enter into any house or building within such  
 limits, and to seize and take away all such intoxicating  
 liquors.

**Railway superin-**  
**intendent may**  
**seize liquors on**  
**railway.**

## CHAP. 75.

No license granted within railway limits or gold district.

43. 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.

Duty of agent for the sale of alcoholic liquors in absence of clerk of license.

44. 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.

Punishment of J. P. selling liquor in violation of Chapter.

45. 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.

Chapter not to apply to City of Halifax.

46. Nothing in this Chapter contained shall apply to the City of Halifax, except where specially mentioned.

## SCHEDULE.

## A.

County 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 County, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

A. B., Clerk of the License.

By order of the Sessions, security having been given as required by law.

County 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 location 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 County, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

A. B., Clerk of the Licenses.

By order of the Sessions, security having been given according to law.

B.

Know all men by these presents that we, \_\_\_\_\_, do hold 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 covenant 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.

any of the constables of \_\_\_\_\_ :  
You are hereby commanded to summon A. B. of \_\_\_\_\_, the County of \_\_\_\_\_, to appear before us at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, to answer to the suit of C. D., Clerk of the License for the County of \_\_\_\_\_, [*if the suit be brought in his name,*] for selling intoxicating liquors to \_\_\_\_\_, 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.

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 CHAP. 76.  
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.)

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## TITLE XVII.

### OF IMMIGRATION.

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#### CHAPTER 76.

##### OF IMMIGRANTS.

1. The Governor has power to appoint an immigrant Appointment of immigrant agent.  
agent as occasion may require. The salary of the Immi- Salary.  
grant Agent shall not exceed eight hundred dollars. He Duties.  
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 To open book.  
mechanics, laborers and apprentices, can enter their names  
and addresses.

To correspond with county officers and keep a registry To correspond and keep registry.  
of the distribution of immigrants sent into the interior.

To act as the guardian of immigrant orphan children, to Act as guardian of orphans.  
bind them as apprentices, and to protect them in case of  
necessity.

To render accounts quarterly to the Provincial Secretary, To render accounts quarterly and report annually.  
and to make an annual report of his proceedings for the  
information of the government and the Legislature.

To act under such instructions as may be issued by the To act under instructions.  
Governor in Council from time to time.

## CHAP. 76.

Governor may authorize to draw.

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.

Commissioner of crown lands to lay off lands and place at disposal of agent.

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.

Surveys, and time for payment allowed.

4. Whenever such lands are required by industrious immigrants arriving in this Province for actual settlement, 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.

Agent to be furnished with plans, &c.

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 receive applications for crown lands, and refer to commissioner.

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.

License of occupation.

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.

When to take possession.

Purchase money; how secured.

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 grant issued.

9. Upon the expiration of three years if the terms shall then be complied with and the purchase money paid or satisfied, or at any 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. CHAP. 76.

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 descend as personal property, subject to the unperformed conditions. License of occupation not transferable.

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 Tenancies and of Forcible Entry and Detainer." Forfeiture of license.

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. Mode of proceeding.

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. Licenses recorded.

14. Nothing herein shall be construed to contravene or conflict with any legislation of the Parliament of Canada on the subject of immigration. Returns.

Governor in council may make regulations.

Not to conflict with Canada law.





## PART II.

## OF PROPERTY, AND THE DOMESTIC RELATIONS.

## TITLE XVIII.

OF REAL PROPERTY. AND THE ALIENATION  
THEREOF.

## CHAPTER 77.

## OF DEEDS BY MARRIED WOMEN.

1. Any deed executed under power of attorney or otherwise, made by a married woman jointly with her husband, or concurred in by a separate conveyance executed by him, of estates to which she is entitled or may have any present or future interest, whether in her own right or by way of dower or otherwise, shall have the same effect as if made by an unmarried woman, if such power of attorney or deed be acknowledged by such married woman before a judge of the Supreme Court, or a justice of the peace, or a notary public being a barrister of the Supreme Court, 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 or justice, or notary public, in writing upon such power of attorney or deed.

Deeds by married women, how executed.

2. 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, a justice of the peace, or before any public minister, ambassador, consul or vice-consul of the Court of Great Britain; and shall be certified in writing on the power of attorney or deed by such public functionary; and in the case of the acknowledgment being taken before the Mayor of a city, judge of a court of record or justice of the peace, his certificate shall be authenticated under the hand and seal of a notary public.

Deeds, how executed abroad.

3. Every such acknowledgment and certificate shall be registered with the power of attorney or deed, and shall be valid and effectual to bar the right, or right of dower, of any married woman in the lands and premises therein mentioned.

Acknowledgments, &c., to be registered.

## CHAP. 79.

Married woman  
may execute  
release after her  
husband.

4. Where a married woman shall not have executed a deed of lands simultaneously with her husband assigning her interest therein, 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.

## CHAPTER 78.

## 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.

## CHAPTER 79.

OF THE REGISTRY OF DEEDS AND ENCUMBRANCES AFFECTING  
LANDS.

Registrars of  
deeds, how ap-  
pointed; depu-  
ties, how ap-  
pointed in cer-  
tain cases.

1. The Governor in Council may appoint a Registrar 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.

Fire-proof safes  
to be provided.

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.

Provisions for  
safe keeping, &c.,  
of books of re-  
gistry.

3. The grand jury and sessions 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 counties with the county rates, such sums as may be necessary from time to time in the premises.

If no assessment,  
justices to  
amerce.

4. In case the grand jury shall not comply with the foregoing section, the justices in session may amerce the counties respectively, for the necessary amount, and may direct the mode of its application.

5. No Registrar shall enter upon the duties of his office CHAP. 79,  
until he shall have given bond to Her Majesty, with such Bonds to be given.  
sureties, and to such amount, and in such form as the  
Governor in Council may direct, for the faithful perform-  
ance 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.

6. Every Registrar shall furnish well bound books, of a Books of regis-  
try, how provi-  
ded, their kind  
and quality.  
kind to be approved of by the Governor in Council, as suit-  
able for the registry of deeds and encumbrances affecting  
lands, in which books such encumbrances and deeds shall  
be registered.

7. A double index to the books of registry shall be made Double indexes  
of books of re-  
gistry kept.  
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.

8. A double index shall be made and kept in like man- Double indexes  
of books of en-  
try kept.  
ner 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 judg-  
ment or attachment when lodged.

9. All deeds, judgments, and attachments affecting lands Deeds, &c., re-  
corded where  
lands lie.  
shall be registered in the office of the county or district in  
which the lands lie.

10. All deeds shall be copied into the books of registry, Deeds copied so  
as to be tran-  
scripts; plans  
entered in books.  
so as to be, as near as possible, transcripts of the originals;  
and copies of any plans and Schedules annexed shall like-  
wise be entered in the books.

11. Deeds within the Province may be proved, first, Deeds, how  
proved within  
province.  
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.

12. Such oath may be administered by the Registrar of Oaths adminis-  
tered by regis-  
trars, judges or  
justices of peace;  
certificate to  
show date.  
the county or district, and shall be so certified upon the  
deed; or it may be administered by a judge of the Su-  
preme 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.

13. In case all the subscribing witnesses to the execu- Deeds how  
proved where  
subscribing wit-  
nesses dead or  
absent.  
tion of a deed by all or any of the parties thereto shall be  
from the Province, the Registrar shall  
d upon sufficient proof of such death or

**CHAP. 79.** absence, and of the hand writing of any one of the subscribing witnesses thereto, 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.

14. 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 eleventh section; such oath to be administered 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 the attestation, with the date to be certified under the seal of a court of record, or of a city, or 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.

Deeds, &c., duly proved and lodged for registry held registered from time of being lodged.

15. 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.

When deed is executed under power of attorney, power must be registered.

16. 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.

Subpœna may issue to compel attendance of witness or the production of deed for registry.

17. Process of subpœna 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 subpœna in the same manner and to the same extent as in other cases; but no witness shall be compelled to produce under such subpœna any deed which he would not be compelled to produce on trial.

18. 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.

CHAP. 79.

Certificate of registry to be received in evidence.

19. 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.

Deeds to have priority from date of registry.

20. 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.

Mortgage, &c., shall not be taken.

21. 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.

Mortgages, how release.

22. 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.

Judgments to bind lands from date of registry.

23. 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.

Dockets of judgments, their contents, how registered.

24. 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 appraisement 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.

Writs of attachment; lands how bound thereby; how registered.

25. 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

Judgments and attachments, how discharged.

**CHAP. 79.** 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.

Leases for more than three years recorded.

26. 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.

Future grants of land recorded in registry of deeds.

27. 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.

Duplicate originals of grants signed by Governor and Provincial Secretary.

28. The duplicate originals of grants kept in the office of the Commissioner of Crown Lands, signed by the Governor, shall hereafter be signed also by the Provincial Secretary.

Separate books for grants furnished to registrars; and grants in duplicate to be forwarded.

29. 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 Commissioner of Crown Lands 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.

Fees.

Registrar at Halifax may keep contemporaneous books.

30. 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.

Plans of partition of townships.

31. 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.

Registry books to be kept in safes, except in Halifax.

32. 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 incur a penalty of eighty dollars for each offence, and on a second conviction shall be ever after incapable of holding the

Penalty.

office of Registrar of Deeds in any county or district of this Province. CHAP. 80.

33. 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.

Deeds registered on declaration made in Great Britain and Ireland, and duly attested.

34. 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 made under Imperial act 5 and 6 W. 4th, cap. 62, shall have same effect as if authenticated under oath.

35. 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.

Acts, deeds &c. done in Great Britain and Ireland and British possessions and authenticated legally there, to have same effect as if sworn to.

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## CHAPTER 80.

### OF JOINT TENANCY AND TENANCY IN COMMON.

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.

Estate to two or more held a tenancy in common.



CHAP. 81.

## TITLE XIX.

OF TITLE TO REAL AND PERSONAL PROPERTY  
BY WILL AND BY DESCENT.

## CHAPTER 81.

## OF WILLS OF REAL AND PERSONAL ESTATE.

What property  
may be devised.

1. Any person may devise and bequeath by his will, 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.

Wills of persons  
under 21 not  
v. l. d.

2. No will by any person under the age of twenty-one years shall be valid.

Wills which  
may be made by  
unmarried women.

3. A married woman may make a will in the following instances, that is to say : a will of her personal estate with her husband's consent expressed in writing ; a will appointing one executor or more to a will whereof she is executrix, or a will of real and personal estate to which she may be entitled in her own right or for her separate use ; an appointment by will made in pursuance of a power to be executed notwithstanding coverture.

Will by married  
woman not void  
for gift to hus-  
band.

4. No will nor any devise or bequest in any will made by a 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.

Wills, how exe-  
cuted ; formal-  
ities required.

5. No will shall be valid unless it shall be in writing 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.

Soldiers' and  
sailors' wills of  
personal estate  
as heretofore.

6. 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 ap-  
pointment by  
will executed as  
a will.

7. 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. CHAP. 81.

8. Every will executed in manner hereinbefore required shall be valid without any other publication thereof. Publication unnecessary.

9. No will shall be invalid on account of the incompetency of the witnesses to prove its execution. No will invalid for incompetency of witnesses.

10. 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. Devise to attesting witness, &c., void in certain cases.

11. 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.

12. 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.

13. 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. Marriage shall revoke will except in certain cases.

14. No will shall be revoked by any presumption of an intention to revoke on the ground of an alteration in circumstances. Wills not revoked by presumptions.

15. 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.

16. 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 Obliterations, interlineations, &c., and how they affect will.

**CHAP. 81.** 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.

Will revoked,  
how revived.

17. 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 af-  
fect wills pre-  
viously made.

18. 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.

19. 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  
residuary devise.

20. Unless a contrary intention shall appear by the will, such real estate or interest therein as shall be con-

rised 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. CHAP. 81.

21. 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 could describe a leasehold estate, if the testator had no leasehold 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 leasehold estates; unless a contrary intention shall appear by the will. Rules for construing wills of real estate in certain cases.

22. 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 the testator 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.

23. 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.

24. 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 The words "die without leaving issue," &c., how construed.

**CHAP. 81.** description required for obtaining a vested estate by a preceding gift to such issue.

Devise of real estate to trustees or executors, how construed.

25. 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.

Devises of estates tail not to lapse in consequence of devise dying before testator, if devisee have issue.

26. 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.

Devises to testator's children, &c., who die before him not to lapse if they have left issue living.

27. 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.

Penalty for suppressing a will.

28. Any person suppressing a will shall forfeit after the lapse of the first thirty days, twenty dollars for every month he shall so suppress such will.

Definition of terms.

29. 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.

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## CHAPTER 82.

### 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; 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.
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.
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.
4. If any person shall die leaving several children, or leaving one child and the issue of one or more others, and such surviving child shall die under age, and not hav-

Rule of desc  
of undevise  
real estate w  
deceased lea  
issue.

Where he leaves  
no issue.

Other cases, and  
as to collateral  
kindred.

Case of unmar-  
ried deceased  
minor leaving  
brothers surviv-  
ing or their  
issue.

**CHAP. 82.**

ing 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.

Where no kindred widow shall inherit.

7. If the intestate shall have no kindred, his estate shall go to the widow to her own use.

Interest of deceased in lands held in trust chargeable with debts.

8. 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 seized of such lands.

Rules for distributing personal estate of intestates.

9. The personal estate of any person who shall die without having bequeathed the same shall be distributed as follows :

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 **CHA** widow, then the whole among such persons.

10. Any child born after the death of the father, there Posthu- children provided where no has made provision 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.

11. If a married woman shall die intestate, without Estates of n rried women ing intestate, how distribui issue her surviving, one half of the real and personal estate owned by her, in her own right, or held by her 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 children of any deceased brother or sister, by right of representation; and if there be no issue, father, mother, brother, or sister, or child of brother or sister, the whole shall go to her husband.

12. Any real or personal estate given by the intestate Advancement, how treated on division and distribution. 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.

13. If such advancement shall exceed the share of the Same subject. child or grandchild, so advanced, he shall be excluded from 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.

14. If the advancement be in real estate, the value Advancement in real estate, how to be considered and regulated. 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.

15. All gifts and grants shall be deemed to have been What gifts or grants shall be held advancements. 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.



## CHAP. 83.

Valuation by testator conclusive.

16. 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.

Advancement, where party dies before intestate.

17. 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 the curtesy and in dower not affected hereby.

18. 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.

19. 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.

Undevised estate distributed as intestate.

20. All such estate, real or personal, as is not devised in a will, shall be distributed as if the testator had died intestate.

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## TITLE XX.

### OF FRAUDS, PERJURIES AND SECRET BILLS OF SALE.

#### CHAPTER 83.

##### OF THE PREVENTION OF FRAUDS AND PERJURIES.

Leases and estates in land, &c., not in writing, to be estates at will, except as to leases under three years.

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 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.

2. No interest in land or in mining areas or other mining **CHA1** 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 &c. assl only by note in v

3. 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 a 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 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.

Contracts require to writing sig by party of able.

4. No special promise hereafter made by any person to answer for the default, debt, 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.

Promise to be answerable for debt of another not invalid for want of statement of consideration.

5. 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 bargain be made and signed by the parties to be charged by such contract, or by their agents thereunto authorized.

Certain contracts not valid unless buyer accept part, give earnest, or note in writing be signed.

6. No declaration or creation of a 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 declare or create 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.

Declarations and creations of trust in lands to be in writing; implied and resulting trusts excepted.

7. 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.

CHAP. 84.

## CHAPTER 84.

OF THE PREVENTION OF FRAUDS ON CREDITORS BY SECRET  
BILLS OF SALE.

Bills of sale or sworn copies to be filed with registrar of deeds where maker resides.

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 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.

Only to take effect from date of filing.

Defeasance to be filed.

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.

Bills of sale when filed to be numbered and indexed.

3. The registrar of deeds shall cause the bills of sale or copies thereof, so 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.

Fee for inspection.

Discharge, how entered.

4. 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 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 CHAP. 84.  
the registrar.

5. The registrar shall be entitled to twenty cents for Registrar's fees.  
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.

6. In construing this Chapter the following words and Meaning of  
terms used in  
Chapter.  
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:

The expression "bills of sale" shall include bills of " Bills of sale.  
sale, assignments, transfers, declarations of trust without  
transfer, and other assurances of personal chattels, and also  
powers of attorney, authorities or licenses to take posses-  
sion 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 busi-  
ness of any trade or calling, bills of sale of goods in foreign  
parts or at sea, bills of lading, warehouse keepers' certi-  
ficates, 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 author-  
izing 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 per-  
sonal property to creditors under proceedings for the relief  
of insolvent debtors.

The expression "personal chattels" shall mean " Personal chat-  
tels."  
goods, furniture, fixtures and other articles capable of com-  
plete 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.

Personal chattels shall be deemed to be in the "ap- " Apparent pos-  
session."  
parent 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 there-  
of may have been taken by or given to any other person.

## CHAP. 85.

## TITLE XXI.

## OF THE DOMESTIC RELATIONS.

## CHAPTER 85.

## OF THE SOLEMNIZATION OF MARRIAGE.

Certain marriages declared valid.

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.

Proviso.

Issue declared legitimate.

2. The issue of all marriages hereby confirmed or rendered valid, are declared to be and are made legitimate to all intents and purposes.

Claims under issue declared valid.

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.

Not to affect pending suits.

4. The three preceding sections shall not extend to or affect any suit or other legal proceeding now pending.

Governor in council to prescribe forms.

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, paupers' asylum, hospital, lunatic asylum, or other public or private charitable institution.

Definition of terms.

Every person recognized as a duly ordained clergyman or minister by any congregation or body of Christians in this Province, may solemnize marriage by license, after publication of banns, in conformity with the provisions of this Chapter.

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Persons who may solemnize marriage.

No person 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 day, otherwise at two several meetings on two Sundays, at 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.

Marriage by publication of banns.

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, except 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.

Banns, by whom published.

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 induced by law.

Penalty for illegally officiating at solemnization of marriage.

OF LICENSES FOR THE SOLEMNIZATION OF MARRIAGE.

The Governor may from time to time sign and seal marriage licenses in blank, 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 that no part of any county shall be at an inconvenient distance from one of them. Due publicity under the direction of the Governor in Council shall be given to these appointments and the objects of this Chapter.

Governor to sign licenses; how distributed.

Information published.

The issuers or deputy registrars shall deposit with the Provincial Secretary receipts for all the blank marriage licenses.

Deputy registrars to give receipts for licenses.

**CHAP. 85.** 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.

Mode in which deputy registrar shall fill up license when applied for.

Bond.

12. When a marriage license is required for use, an 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.

Deputy registrar shall record issue of license and proceedings thereon.

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.

Clergyman shall register particulars of all marriages in forms furnished by deputy registrar.

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 to ascertain all marriages in vicinity.

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 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

When persons not able to write.

Governor in council may define limits of deputy registrars' jurisdiction.

Errors in registry, how corrected.

The deputy registrar, and such deputy registrar is here-  
 authorized and required to investigate the circumstan-  
 of the case ; and if he shall be satisfied that an error  
 been committed in any such entry, it shall be lawful  
 im to correct the erroneous entry, according to the  
 of the case, by entry in the margin, without any  
 ation of the original entry. Envelopes enclosing the  
 rs or returns required to be transmitted, and made  
 r this Chapter, shall be marked " registration returns,"  
 the signature of the officer or clergyman trans-  
 ng, subscribed.

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Envelopes enclo-  
 sing returns, &c.,  
 how marked.

RETURNS.

1. *By Clergyman.*

Every clergyman shall return to the issuer or deputy  
 registrar, by whom the same is subscribed, every marriage  
 se used by him for the celebration of marriage, within  
 ays after such celebration, with the blank certificate  
 rsed thereon fully filled in and subscribed by himself,  
 ng the fact of the celebration, the names, abodes, and  
 ions of the couple married, the time and place of such  
 age, and the names of at least two persons present  
 at besides himself.

Clergyman shall  
 return to deputy  
 registrar mar-  
 riage license  
 within ten days  
 after marriage.

Every clergyman or minister shall keep a register  
 l marriages solemnized by him, whether by banns or  
 se, by filling up a blank form with all the particulars  
 ired concerning each marriage, and shall return it along  
 the license, or by itself if said marriage has been  
 ized by banns, to the nearest issuer of marriage  
 ses, or the issuer from whom the license was received,  
 n ten days after such celebration, and shall be entitled  
 ceive twenty-five cents for each return of marriage so  
 , provided it has been made conformably to law.

Shall keep regis-  
 ter of all mar-  
 riages and re-  
 turn same to  
 issuer.

Fee.

Issuers of marriage licenses shall make returns to  
 rovincial Secretary's office, in the first weeks of Jan-  
 April, July, and October in every year, of all  
 ages of which returns have been made to them by  
 ymen, which returns shall contain all the particulars  
 i in the forms filled up and forwarded to them by said  
 ymen; and they shall receive fifty cents for each mar-  
 so returned, to be paid out of the marriage license

Issuers shall  
 make quarterly  
 returns to P. S. O.

2. *By Deputy Registrar.*

Every deputy registrar shall, in the second weeks  
 nuary, April, July and October, in each year, return  
 r his signature, to the Provincial Secretary's office as

Deputy registrar  
 shall make the  
 following re-  
 turns to P. S. O.

VS :



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Licenses issued  
and returned.  
Bonds.

Registers re-  
turned by cler-  
gymen.

His own records  
of marriages.

All returns re-  
quired under  
this Chapter.

Deputy registrar  
shall account to  
Provincial secre-  
tary for all li-  
censes.

(1.) All the licenses issued by him and returned to him, with all certificates of marriage returned to him.

(2.) All bonds taken by him on the issue of marriage licenses.

(3.) All the registers of marriage returned to him by clergymen.

(4.) His own records of marriage licenses issued by, and certificates of marriage returned to him.

(5.) And, generally, all the entries and returns required 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.

20. Every deputy registrar shall also, within the first weeks of January, April, July and October in each year, return to the Provincial Secretary's office, an account verified 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 seventeenth section, and of which he shall render an account under his signature.

## PENALTIES.

Penalty for sol-  
emnizing mar-  
riage otherwise  
than as herein  
provided.

21. Every person who shall officiate in the solemnization 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.

Penalty for re-  
fusal to give no-  
tices as in sec-  
tions 7 and 8.

22. Every officiating clergyman or minister of a 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.

Penalty for falsi-  
fying marriage  
license.

23. 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.

24. Every clergyman who shall not, within ten days **CHAP. 85.** 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 seventeenth 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 not returning license.

25. 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 neglect of duty by deputy registrar.

26. 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.

Penalty for making false statements.

27. 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.

28. All fines and fees made payable to or for the use of a deputy registrar, may be sued for in the name of the

Fines and fees payable to deputy registrar, how recovered.

**CHAP. 86.** 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, &c., not made payable to deputy registrar, how recovered.

Actions, how conducted.

Issuers of marriage licenses to give bonds.

29. 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 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 county, to be paid to the County Treasurer.

30. The actions shall be conducted as for private debts, and it shall suffice if the writs briefly state the offence committed.

31. 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.

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## CHAPTER 86.

### OF THE PROTECTION OF MARRIED WOMEN IN CERTAIN CASES.

A wife deserted by husband may apply to court for order to protect her property.

Judge if satisfied of desertion may grant order.

Wife shall hold property as *feme sole*.  
Order entered with registrar of deeds.

1. A wife deserted by her husband, wherever resident in Nova Scotia, may at any time after such desertion, apply to a judge of the Supreme Court for an order to protect any money or property she may have acquired, or may acquire, by her own lawful industry, and any property which she may have become possessed of, or may become possessed of after such desertion, against her husband and his creditors, or any person claiming under him.

2. Such judge, if satisfied of the fact of the desertion, and that the same was without reasonable cause, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earnings and property acquired since the commencement of such desertion, from her husband, and all creditors and persons claiming under him; and such earnings and property shall belong to the wife as if she were a *feme sole*. Provided, always, that every such order, after the making thereof, be entered with the registrar of deeds within whose jurisdiction the wife is resident.

3. It shall be lawful for the husband, and any creditor or other person claiming under him, to apply to a judge of the Supreme Court for a discharge of such order, who, on sufficient cause shewn, may grant such discharge.

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Husband or creditor may apply for discharge of order.

4. If the husband, or any creditor of, or person claiming under the husband, shall seize or continue to hold, any property of the wife after notice of any such 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 a sum equal to double the value of the property so seized or held after such notice.

Husband or creditor seizing property of wife after notice of order, how liable.

5. If any such order of protection be made, the wife shall, during the continuance thereof, be deemed to have been, during such desertion of her, in the like position in all respects, with regard to property and contracts and suing and being sued, as she would be if she had obtained a decree of divorce.

After order, wife, as regards property, &c., same as if divorced.

6. The provisions contained in this Chapter respecting the property of a wife, who has obtained a decree of divorce or an order for protection, shall be deemed to extend to property to which such wife has become or shall become entitled, as executrix, administratrix, or trustee, since the sentence of divorce or the commencement of the desertion, as the case may be; and the death of the testator or intestate shall be deemed to be the time when such wife became entitled as executrix or administratrix.

Provisions of Chapter to extend to property obtained as executrix.

7. In every case in which a wife shall, under this Chapter, have obtained an order to protect her earnings or property, or a decree of divorce, such order or decree shall, until reversed or discharged, so far as necessary for the protection of any person or corporation who shall deal with the wife, be deemed valid and effectual.

Order valid security for person dealing with wife.

8. No discharge, variation, or reversal of such order or decree, shall prejudice or affect any rights or remedies which any person would have had in case the same had not been so reversed, varied, or discharged, in respect of any debts, contracts, or acts of the wife, incurred, entered into, or done between the times of the making of such order or decree, and of the discharge, variation, or reversal thereof.

Discharge, &c., of order not to affect contracts, &c., made while in force.

9. Property of or to which the wife is possessed or entitled, for an estate in remainder or reversion, at the date of the desertion or decree, (as the case may be), shall be deemed to be included in the protection given by the order or decree.

Reversionary interests of wife included in order.

10. Every order which shall be obtained by a wife under this Chapter, for the protection of her earnings or property, shall state the time at which the desertion, whereof the order is made, commenced; all, as regards all persons dealing with

Order shall state time desertion commenced.

**CHAP. 87.** such wife in reliance thereon, be conclusive as to the time when such desertion commenced.

Parties making contracts with wife without notice of reversal shall be in same position as if order remained in force.

11. All persons and corporations who shall, in reliance on any such order or decree, 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 such order or decree may then have been discharged, reversed, or varied, or at some time since the making the order or decree, 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 or decree were valid, and still subsisting, without variation, in full force and effect, 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 persons or corporations had notice of the discharge, variation, or reversal of such order or decree.

Husband may insure life for benefit of wife, &c.; amount not liable for his debts.

12. Hereafter a husband may insure his life for the sole benefit of his wife or of his wife and children, and in case of his decease, the amount payable under the policy of insurance shall enure to the sole benefit of such wife or wife and children (if any), as the case may be; and where the policy is made payable to the wife and children the amount shall be distributed according to the law of descent of personal property. The amount of such policy shall be in no manner liable for the debts of the husband.

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## CHAPTER 87.

### OF GUARDIANS AND WARDS.

Guardians may be appointed by father.

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, when and how appointed by judge of probate.

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 shewn 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. CHAP. 88.

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. Power of guardians.

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. Bonds to be given; their conditions.

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. Letters, how applied for and when granted.

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. Apprenticeship entered upon not affected hereby.

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## CHAPTER 88.

### 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 age of fourteen years, may be bound as servants; females to the age of eighteen Minors may be bound as apprentices or servants.

**CHAP. 88.** 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.

Under fourteen years, how bound.

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.

Above fourteen, 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.

Indenture to be of two parts, sealed and certified in certain cases.

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.

Custody of minor's part.

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 Peace, and be safely kept in his office for the use of the minor.

Overseers of poor may bind out pauper minors.

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.

Terms of contract of indenture.

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, write and cypher, 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 Peace, 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 of

apprenticeship made in pursuance of this Chapter, shall CHAP. 88.  
be paid or secured to the sole use of the minor thereby  
bound.

10. Parents and guardians and overseers shall inquire Duty of parents, guardians and overseers respecting children bound out.  
into the treatment of all children bound by them respec-  
tively, 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.

11. In case of any misconduct or neglect of the master, Proceedings for misconduct of master.  
a complaint may be made in writing by the parents, guar-  
dian, 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 hav-  
ing duly notified the master, shall proceed to hear and  
determine the same.

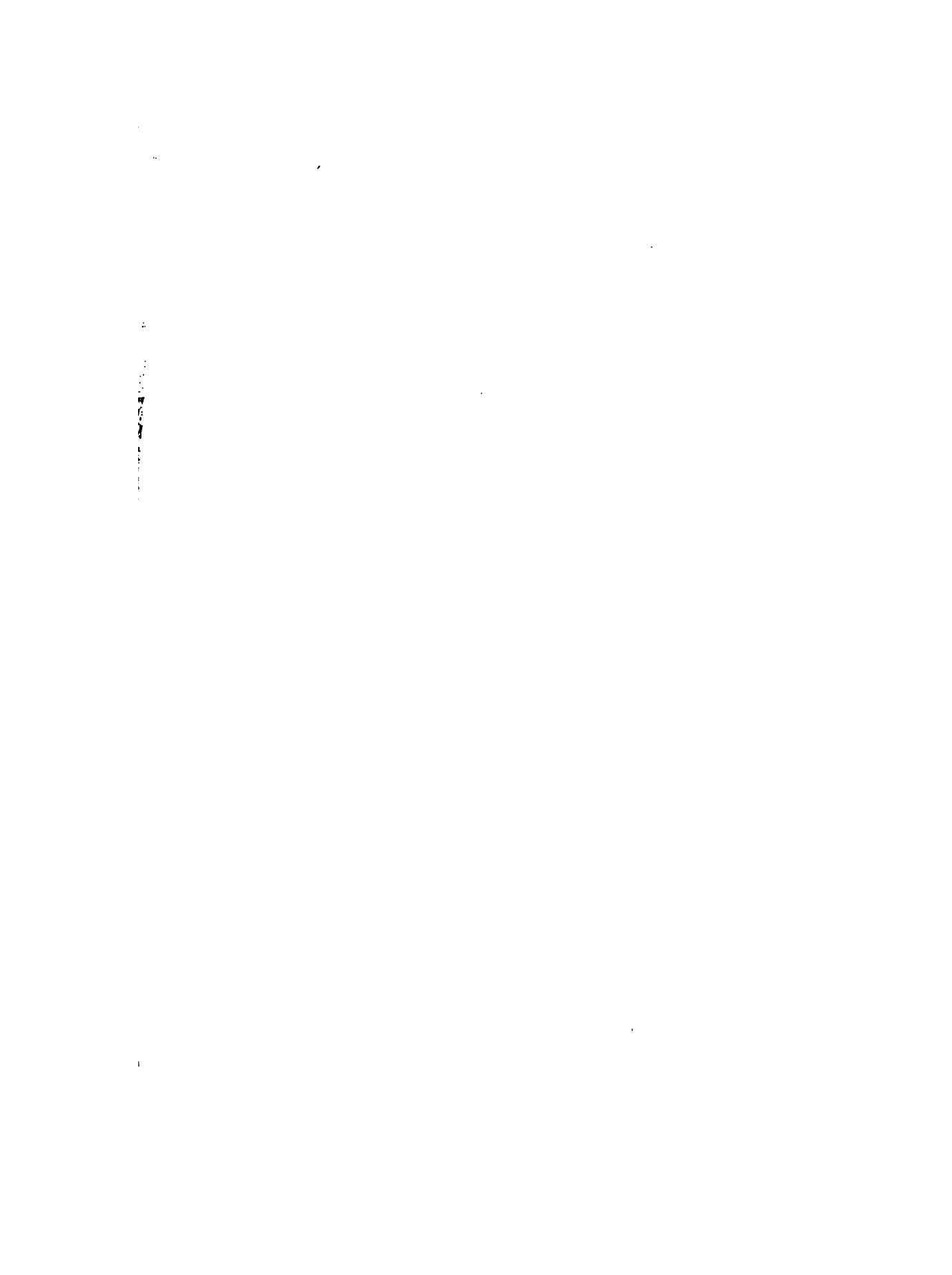
12. After a full hearing of the parties, or of the com- Hearing, and power of justices to afford redress.  
plainants alone, if the master shall neglect to appear, the  
justices may order that the minor be discharged from his  
apprenticeship or service, and give the costs of suit against  
the master, and may award execution accordingly, and the  
minor may be thereupon bound out anew.

13. If the complaint shall not be maintained, the jus- Proceedings where complaint dismissed.  
tices shall award costs for the master against the com-  
plainants, and shall issue execution accordingly, excepting,  
but 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.

14. Any person feeling himself aggrieved by the order Appeal for persons aggrieved.  
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 deter-  
mined in the same manner as in civil suits.

15. If any apprentice or servant bound as in this Chap- Apprentice absconding or guilty of misconduct, how punished.  
ter, 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 to ap-  
prehend 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.





## PART III.

## OF COURTS AND CIVIL REMEDIES.

## TITLE XXII.

OF THE VARIOUS COURTS: THEIR  
CONSTITUTIONS AND JURISDICTIONS.

## CHAPTER 89.

## OF THE SUPREME COURT AND ITS OFFICERS.

## JUDICIAL OFFICERS.

1. The bench of the Supreme Court shall be composed of a Chief Justice, a Judge in Equity, and five other or Bench of Supreme Court. Puisse Judges.
2. No person shall be appointed a Judge of the 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 next before such appointment, or held office as a District or County Judge in the Province. Qualifications for judgeship.
3. The Judges of the Supreme Court shall hold no other offices under government except those of Judge of the Court of Vice-Admiralty, and Judge Ordinary of the Judges to hold no other offices. Court for Divorce and Matrimonial Causes. Exceptions.

## JURISDICTION.

4. The Supreme Court shall have within this Province Powers of Supreme Court. the same powers as are exercised by the Courts of Queen's Bench, Common Pleas, Chancery and Exchequer in England.
5. The Equity Judge shall have jurisdiction in all cases Of equity judge. formerly cognizable by the Court of Chancery, and shall exercise the like powers, and apply the same principles of equity as justice may require, which were formerly administered in that Court.
6. In all actions at law in the Supreme Court, on the Powers of Supreme Court or judge where equitable trial or argument of which matters of equitable jurisdiction arise, that Court shall have power to investigate and

**CHAP. 89.** determine both the matters of law and equity, or either, as **considerations** may be necessary, for the complete adjudication and **are involved.** decision of the whole matter, and all actions at law to which equitable defences shall be set up in virtue of the sections of Chapter 94, "Of Pleadings and Practice in the Supreme Court" from section 162 to section 164, both inclusive, and from section 296 to section 300, both inclusive, shall be tried, considered, and adjudicated by the Supreme Court and its judges in the same manner as regards such several cases respectively, as the Supreme Court or the judges thereof had power to do when the Act for appointing a Judge in Equity was passed. But it shall be lawful for the Supreme Court, or for any judge of that Court, before whom the consideration, trial, or hearing of any question of equitable jurisdiction, or any such mixed questions of law or equity may come, if they or he shall deem it expedient and conducive to the ends of justice to do so, to order the case or any subject matter arising thereon to be transferred to the jurisdiction of the Equity Judge, to be dealt with according to the principles of equitable jurisprudence, and the exigencies of the case.

PROVISION IN CASE OF DISABILITY, ETC., OF JUDGES.

Equity Judge to sit in Supreme Court only in certain cases.

7. The Judge in Equity shall not be required to attend the circuits unless the illness of a judge or other sufficient cause shall render it necessary, or sit in banc to hear arguments, except on appeals from the Equity Court, when he shall sit with the others in banc, unless he shall be prevented by illness, absence, or other unavoidable cause. In the absence of all the judges of the Supreme Court from Halifax, or in case of their illness, it shall be incumbent on the Judge in Equity to perform any of the duties that may be required there, of a judge of the Supreme Court.

In absence of equity judge, Supreme Court may hear appeals from equity judge.

8. In case of the continued absence of the Judge in Equity, from the Supreme Court sitting in banc, from illness or any other unavoidable cause, it shall be lawful for the Supreme Court to proceed in the hearing of appeals from the decision of the Judge in Equity, and to pronounce judgment therein, in the same manner as if the Judge in Equity was present, anything in this Chapter to the contrary notwithstanding.

Duties of equity judge performed by other judges in certain cases.

9. In case of the illness of the Equity Judge, or in case of his absence from Halifax, either on judicial duty or otherwise, and also in cases requiring attention in the country on circuit, and when the Equity Judge does not preside, the duties imposed on him may be exercised by the other judges, or any of them, as the cases may require.

## PROTHONOTARY.

## CHAP. 89.

10. The Prothonotaries throughout the Province shall sue subpoenas in Crown cases, and perform all such other duties as may appertain to the office of Clerks of the Crown.

Prothonotary to act as clerk of crown.

11. On the first day of each Term the Prothonotary and Clerk of the Crown shall make out and deliver in open Court a correct statement of all fines which shall have been imposed by the Court at the preceding Term orittings, together with a statement of all such as have been collected and paid to him by the Sheriff since the last preceding Term; and he shall annually return to the Provincial Secretary a return in triplicate of all convictions and before, and of all fines and forfeitures imposed by the Supreme Court, the amounts collected and the appropriation thereof, under a penalty of twenty dollars.

Prothonotary to make up certain statements.

12. The Prothonotary shall not permit any original paper to be taken out of his custody without a written order from a judge, which order shall be filed.

Papers, how taken off file.

13. The Prothonotaries shall not transmit original papers to the officers in Halifax without special order from a judge, but shall, when required by any suitor or his attorney, provide certified copies to be used in place of the originals.

Original papers in country.

14. The Prothonotary shall not be obliged to issue any execution until the fees and costs due him on the judgment are paid.

Costs before execution.

15. In order to facilitate references made at arguments by counsel to minutes or papers before the Court, the Prothonotary in transcribing the judge's notes shall insert in each page of the transcript the words contained in the corresponding page of the original, and shall number consecutively the pages of such transcript or otherwise the same shall not be taxed for; and all copies used in arguments shall be conformable in those respects to that transcript or otherwise the same shall not be taxed for.

How prothonotary shall transcribe minutes, &c.

16. All papers furnished to the judges, and those used by counsel, shall contain the same words on each particular page, and in the lines, and shall be numbered also consecutively in the pages and lines.

Counsel shall use exact copies.

17. Any obligation or security for the performance of any duty, or the doing of anything which heretofore has been, or hereafter may be, ordered by the Supreme Court at Law or in Equity, or any judge or judges thereof, to be made to any Prothonotary of the Supreme Court as the obligee thereof, may be enforced by action at law, and in the name of any succeeding Prothonotary, or of any other Prothonotary, under an order of the Court or a judge; and

Obligations to prothonotary, how enforced.

**CHAP. 90.** 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.

Rights of parties without province reserved in applications for administration, &c.

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.

Testimony to prove a will, &c., in writing, and filed.

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.

Wills, how proved when witness distant, absent or sick.

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.

Administration, to whom granted, and in what order.

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:

*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.

Judge may associate another with next of kin.

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 in the administration, such person as he may think fit and proper for that purpose.

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 state 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.

CHAP. 90.  
Administrator of person dying out of province appointed in last domicile, to be preferred in province.

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 to give bonds.

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.

Administrator may be required to enter into new bond.

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.

Bond in form now used.

17. Every oath administered to an executor or administrator on entering into office shall be subscribed in writing.

Oaths in writing.

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.

Inventory filed within three months.

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.

Further inventories may be filed.

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.

Fine for neglecting to file inventory, how and by whom recoverable.

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. :

Articles to be omitted from inventory.

CHAP. 90.

*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.

Warrant of appraisement, when and how issued; appraisers' fees.

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.

When property in different places may be two or more inventories; warrant filed with inventory.

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.

Appraiser's oath, before whom sworn; certificate to be on warrant.

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.

Executors, &c., to advertise in Gazette; accounts attested according to form; cases of informal attestation provided against.

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; 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.

3. In case the personal estate of the deceased shall be insufficient by the judge on affidavit insufficient for the payment of his debts and legacies, such judge, upon 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.
4. No such license shall be in force more than one year after the granting thereof.
5. Every license shall be entered in the registrar's books, and a copy thereof duly certified by the judge or registrar shall be registered in the office of the registrar of the county or district in which the real estate lies, and such certified copy, or a copy thereof from the registry certified under the hand of such registrar of the county or district, shall be evidence of such license in all courts, without further proof.
6. 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 amount with two sureties to be approved by him, the bond to be in the form in the schedule.
7. 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 the 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.
8. When any part of the real estate of the testator has been undevisee, and the personal estate shall be insufficient for the payment of debts, legacies and expenses, the undevisee 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.
9. 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 by posting up notices thereof in the township

## CHAP. 90.

License for sale, &c., of real estate, where personal property insufficient to pay debts.

License in force only for year.

License entered and registered.

Certified copy evidence.

Security for license given by bond.

In case executor &c., shall not give security judge may appoint another person to act.

Undevisee real estate to be sold first for payment of debts, &c.

Notice of sale of real estate by license, how given.



**CHAP. 90.** 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.

Executor may adjourn sale; notice of adjournment.

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.

Affidavit of executor, &c., evidence of sale.

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.

Deeds, &c., as effectual as if made by deceased.

35. All deeds of conveyance, mortgages or leases, made pursuant to the license, shall have the same effect as if made by the deceased.

Administrator to convey lands when intestate has contracted for sale.

36. If the deceased at the time of his death, was 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 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, &c.

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 one hundred and eighty-ninth section of Chapter Ninety-four, and shall, for that purpose be held to represent the said trustee or executor.

40. The judge of probate may order the real estate of **CHAP. 90.** the testator or intestate, wherever situate within the Province, to be divided among the next of kin, 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 being next of kin, 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.

Judge made order division of real estate amongst next of kin.

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.

Where division among children cannot be made without prejudice; order how made.

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, &c., 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, to the faithful discharge of their duty.

Divisions of real estate, how made.

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

Notice before division approved by judge.

**CHAP. 90.** *Royal Gazette*, for at least four weeks before the day named, shall be considered sufficient service of notice.

Confirmation by judge, and costs.

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-second section.

Plans may be ordered by judge.

48. Where such division is made the judge may, if necessary, order a surveyor to prepare a plan to be filed with the registrar.

When division among next of kin cannot be made without prejudice, judge may order whole to one heir, &c.

49. In cases where the estate of a testator or intestate is divisible amongst the next of kin, being collateral heirs, and such division, or the division of any particular portion thereof, cannot be made without prejudice to the whole estate, the judge of probate may order the whole, or, after the division of the residue, the whole of a particular portion, 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.

Order, how made, &c.

Age of heirs, how ascertained.

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.

Desperate debts.

51. An executor or administrator, at any time after the lapse of twelve months from the issuing of probate or letters of administration, may file an affidavit in the registry of the court, with a Schedule of desperate debts attached, containing the particulars of dates, names, and amounts, setting forth therein that such debts are, as he believes, desperate, and that he has been unable to collect the same; and thereupon the judge of probate 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.

Executor, &c., when creditor, to file account before distribution.

52. 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,

true and correct account of all dealings between the deceased and himself, verified by affidavit in the form in the annexed Schedule. CHAP. 90.

53. 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.

54. 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 estate. 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.

Estate how declared insolvent.

Insolvency how pleaded, &c.

55. 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. Such citation shall be served personally on all those to whom it shall be directed living in the county or district of the judge, at least fifteen days before the return thereof, and upon those living out of the county or district, or whose residence may be unknown, either personally fifteen days previously or by publishing the same in the *Royal Gazette* for at least four weeks before the return thereof. The citation to be in the form in the Schedule.

Proceedings where executor &c., required to render account; citations, how served, their form, &c.

56. It shall not be necessary to serve any citation preliminary 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

Citations on final settlement, to whom directed.

**CHAP. 90.** order such service, and shall in such order name the parties to be so cited.

Who may serve citation; service, how verified; expense, how borne.

57. Any literate person may serve such citation, and an affidavit in writing of the service having been regularly 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.

All persons interested may contest settlement.

58. Any person interested in the estate of the deceased 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.

Executor, &c., to produce vouchers; may be examined upon oath; sums under eight dollars how vouched.

59. On making his account, every executor or administrator 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 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.

Hearings adjourned; auditors appointed.

60. Any hearing may be adjourned from time to time 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 confirmation, and may make a reasonable allowance to such auditors, to be paid out of the estate.

Final settlement and allowance of account, of what facts conclusive evidence.

61. The final settlement of the account and the allowance 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.

*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. CHAP. 90.

62. 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 judge 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.

Costs, how allowed, taxed and recovered; review of taxation provided.

63. Every executor or administrator, at the expiration of eighteen months from the date of the letters testamentary on 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, &c., after 18 months to pay debts, and make distribution.

64. 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 be cited to account.

65. 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-fifth section.

Executor or administrator may cite co-executor or co-administrator to account.

## CHAP. 90.

In settlement of accounts court to have power of chancery.

Commissions to executors, &c., how adjusted.

Distribution of surplus assets.

Order of distribution of insolvent estate.

Mortgages, judgments, &c., when not affected by last section.

66. 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.

67. 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.

68. 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.

69. 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:

*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; to 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.

70. 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 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. CHAP. 90.

71. 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.

Judge or registrar not to be counsel, &c.

72. 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 to have charge of books, &c.—temporary registrar, how appointed.

73. 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.

Different books to be kept by registrar.

74. 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 liberal transcript of the original.

Wills, how registered.

75. All decrees are to be regularly filed and registered.

Decrees filed and registered.

76. All letters of guardianship and letters *ad colligendum* are to be registered.

Letters of guardianship, &c., registered.

77. 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, and such appeal, when so perfected, shall be a stay of proceedings.

Appeals to supreme court provided; time and manner of appeal; bond when to be filed.

78. Upon the appeal being perfected, and the fees for making the copies hereafter mentioned being paid, the judge of probate shall immediately transmit to the court in which the appeal is to be heard and determined, a copy of the appeal, and of all such papers, documents and testi-

Judge to transmit appeal, copies of papers &c., to court of appeal.



**CHAP. 90.** money, as shall be ordered by the Court, or any judge thereof at chambers, on the subject of the appeal, with a statement of the decision made by him, certified under his hand or that of the registrar.

Cause when remitted.

79. 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.

Court of appeal may enforce return of papers on neglect of judge.

80. If upon the appeal having been perfected, and the fees allowed in the seventy-eighth 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.

For special cause appeals allowed within six months after time elapsed.

81. 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.

Costs allowed by the court of appeal, and execution may issue; bonds how sued on.

82. 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.

Feigned issues ordered.

83. 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 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.

84. 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.

85. 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.

CHAP. 90.  
Administration with will annexed granted where executor refuses to act.

86. 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.

Executor ordered to give bonds upon complaint of waste.

87. 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.

Judge empowered to issue compulsory process, and punish for contempt.

88. All compulsory process shall be directed to the Sheriff or his deputy, or to a coroner.

Process, how directed.

89. No letters *ad colligendum* shall be granted by the judge without due security being first taken.

Letters *ad colligendum*, how granted.

90. 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.

Wills when and how taken from office.

91. 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.

Parties may file papers and advocate their own causes.

92. The value of an estate in reference to the fees 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 estates as to fees, how estimated in first instance.

93. 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, &c., cited by successor to account, &c.

94. 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

Judge may order money to be paid by executor, &c., into bank.

**CHAP. 90.** shall be so paid the bank shall not permit the same to be withdrawn without the order of the court of probate.

When specific legacy as compensation to executor shall be in lieu of commission.

95. 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.

Surrogate, appointment, powers of, &c.

96. A judge of probate shall have power to appoint a surrogate during any temporary absence, subject to the approval of the Governor in Council; and such surrogate during such absence shall possess all the powers, and discharge the duties, of the judge of probate.

Judge may authorize person to administer oath in certain cases.

97. 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.

Forms to be observed.

98. The forms in the annexed Schedule shall be observed, as nearly as may be, in the court of probate.

Fire proof safes to be provided.

99. Fire proof safes shall be provided in the several counties and districts for the preservation of the records, books, and papers of the registry.

Provisions for safe keeping, &c., of books of registry.

100. The grand jury and sessions 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.

If no assessment, justices to amerce.

101. In case the grand jury shall not comply with the foregoing section, the justices in session may amerce the counties respectively, for the necessary amount, and make direct the mode of its application.

Not to conflict with Canada law.

102. 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, CHAP. 90.  
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.*

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 \_\_\_\_\_,

CHAP. 90. within your bailiwick, the sum of —, for costs awarded in favor of —, 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 sum and 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.

*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.

*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 — 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 CHAP. 90.  
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 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

**CHAP. 91.** 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,*] ———, 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 ———. }

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## CHAPTER 91.

### OF THE JURISDICTION OF JUSTICES OF THE PEACE IN CIVIL CASES.

- Jurisdiction of single justice §20; of two justices §80.**
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 county wherein the defendant resides, shall have jurisdiction; and they shall have power to sue executors or administrators.
- Suit, how conducted.**
2. 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.
- Jury in cases over §20.**
3. When the whole cause of action exceeds two dollars and does not exceed eighty dollars, either party may obtain a jury by applying to the justices therefor at least two days before the return day of the process. No justice shall issue any writ of summons or capias, unless the party applying therefor shall file a statement in writing containing
- Particulars of account or note, filed before writ issues.**

- g the particulars of his cause of action, or of the promisory note or other instrument on which he is suing, a copy which shall be furnished to the defendant by the justice 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. **CHAP. 91.**
4. A statement in writing of the particulars of the plaintiff's claim, shewing both debts 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. Note filed on final judgment, &c.
5. All writs shall be directed to and be served and executed by a constable of the county wherein the writ is made returnable. *When the defendant resides* Writs, how directed and served.
6. 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. Copy of summons, when delivered to defendant.
7. 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 such service. Return of writ, how made.
8. 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.
9. No person shall be arrested for a debt under four dollars; nor for any debt, unless the affidavit contain an allegation that the plaintiff verily believes that unless such writ be granted the debt will be lost, and that he verily believes the defendant is about to leave the county. No capias for debt under four dollars, nor for any debt unless under special affidavit.
10. No female or minor shall be arrested on a writ of capias issued by a justice. Female or minor exempt from capias.
11. 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
- Particulars annexed to summons.
- Persons arrested admitted to bail.



- CHAP. 91.** 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 jail: 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 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.
- Present during trial.**
- Discharged on perfecting appeal.**
- Constable's fees of travel.**
- Escape; when sheriff not liable.**
- Causes, when tried.** 12. 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.** 13. 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 when sufficient cause on affidavit is shown, the justice may continue the cause till some further time, not exceeding thirty days, upon such terms as to costs, security, or otherwise, as he may deem right; of which continuance he shall notify the parties, plaintiff and defendant.
- Jury, how summoned.** 14. 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.
- Fine for non-attendance of juror.** 15. Any juror so summoned who shall neglect to appear, and shall not show to the 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.
- Jurors, how sworn; proceedings until verdict.** 16. 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

ry together, and not to suffer any one to speak to them, or to speak to them himself, without leave of the justices ;' and when agreed, the jury shall return their verdict, whereon judgment shall be given accordingly. CHAP. 91.

17. 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.

18. 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 or in writing under his hand, the same shall be established on the oath of one witness. Proof on oath of one witness, where action not confessed.

19. 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. Plaintiff's proof confined to statement filed.

20. A defendant who intends to rely upon a set-off shall prove 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. Defendant to file or serve set-off two days before return of writ.

21. 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. If defendant prove set-off equal to or exceeding plaintiff's demand proved, judgment accordingly.

22. 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. Where tender before suit and amount paid in, judgment for defendant.

23. The party succeeding shall in all cases be entitled to his costs. Costs.

24. 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 issue execution against the goods and chattels, and for want Execution, how issued in case of death, &c., of justice.

**CHAP. 91.** thereof against the body of such person, for the sum awarded, with costs.

Return of execution.

25. All executions shall be made returnable in thirty days.

Execution not to issue after one year except in certain cases.

26. 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.

Duty of constable in levying execution on personal property.

27. 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.

Sale, how conducted; return of execution; money to whom payable; adjournment of sale; goods unsold to be restored.

28. 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.

Constables not to purchase.

29. 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.

For want of goods, party committed.

30. For want of goods whereupon to levy, the constable, unless otherwise directed, shall commit the person against whom the execution is issued to jail.

Appeal, and manner of proceeding thereon.

31. In case of an appeal the appellant, or, in his absence, his agent, before the appeal shall be allowed, shall make an affidavit in writing that he is 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 double the amount of the judgment, 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 ten days after judgment in such cause, such justice or justices shall be bound to grant returnable to the next term of the Supreme 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.

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32. 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.

Sureties may render appellant.

33. The judge before whom 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.

Parties confined to original case.

34. In case of appeal the justice, unless he shall receive a notice in writing signed by both parties or their agents to the contrary, shall return to the Prothonotary of the Supreme Court, before the opening of the Court on the first day of the next term in the county, all papers in the cause, with a transcript of the judgment, and the affidavit and bond whereon the appeal was allowed.

Justice to return papers to prothonotary, unless by consent of parties in writing.

35. Any constable neglecting to serve or make return 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.

Fine for constable neglecting to return writ.

36. Any constable neglecting to return an execution for the space of ten days after the return day thereof,

Fine and proceedings where constable ne-

## CHAP. 91.

neglects to return  
execution.

Stipendiary  
magistrate's  
jurisdiction.

Process, how  
issued, &c.

Forms.

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.

37. Stipendiary magistrates shall severally within their jurisdictions have and exercise all the powers and jurisdiction conferred by this Chapter on two justices of the peace.

38. All writs of summons, *capias*, *subpœna*, and *venire* shall require but one seal, 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 practicable, be endorsed by the justice first applied to, who is to prepare the affidavit also. In all suits triable before two justices, the summons and *capias* shall be signed by two justices, and the execution in such case shall have two seals, and shall, where practicable, be signed by the two justices who issued the mesne process and tried the cause. Writs of *subpœna* and *venire* and *subpœna* tickets shall be signed by one justice only: 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.

39. The forms shall be as in the Schedule.

## SCHEDULE.

*Summons.*

County of \_\_\_\_\_, SS.

To any of the constables of the said County:

You are hereby required to summon A. B., of \_\_\_\_\_, to appear before \_\_\_\_\_, at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, to answer to C. D. in the sum of \_\_\_\_\_, and to make return thereof, on or before the said day.

Witness \_\_\_\_\_ hand and seal the \_\_\_\_\_ day of \_\_\_\_\_, 18—.

E. F., J. P. (Seal.)

G. H., J. P. (Seal)

*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, you will not be permitted to give evidence of any such set-off.

*Capias.*

County of \_\_\_\_\_ SS.

To any of the said constables of said County :

You are hereby required to take A. B. of \_\_\_\_\_, and him safely keep, so that you may have him before \_\_\_\_\_ at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, in the \_\_\_\_\_ noon, to answer to C. D. in the sum of \_\_\_\_\_, whereof fail not, and to have there then this writ, with your doings thereon.

Witness \_\_\_\_\_ hand and seal at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 18—.

E. F., J.P. (Seal.)

G. H., J.P. (Seal.)

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 a capias.*

A. B. of \_\_\_\_\_, in the County of \_\_\_\_\_, maketh oath and saith, that C. D. is justly indebted to the deponent in the sum of \_\_\_\_\_ after giving full credit, to the best of deponent's knowledge or belief, for all payments or offsets; that the cause of action does not exceed eighty dollars; that deponent verily believes that unless a writ of capias be granted the debt will be lost; and also that he verily believes that the said C. D. is about to leave the county.

A. B.

Sworn at \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, before me.

E. F., J. P.

*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 jail, [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 jail,] in \_\_\_\_\_, the keeper whereof is required to take the said C. D. into his custody, and him safely keep until he pay the

CHAP. 91. sum above mentioned, with your fees and jailer'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.)

*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 the parties, to come and be present at ———, on the ——— day of ———, at ——— o'clock, in the ——— noon, to make 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 G.  on the ——— day of ——— by me.

O. P., constable.

If required, the following affidavit to be made by the CHAP. 91.  
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 jail 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.

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. 91.*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 before [*name the justice or justices issuing the capias*] on the — day of —, [*insert the day appointed for the trial*] to answer to the suit of the above named [*name 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 Court before [*name the justice or justices before whom the trial was had,*] Justices of the Peace.

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

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,] maketh oath and saith CHAP. 91.  
 that he is really dissatisfied with, and feels aggrieved by,  
 the judgment given in this cause, and that he does 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 ab- sence, 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 [*double  
 the amount of the judgment, debt and costs,*] to be paid to  
 the said G. H., his certain attorney, executors, administra-  
 tors or assigns, for which payment we bind ourselves, and  
 every of us by himself, our and every of our heirs, exe-  
 cutors 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 appel-  
 lant*] 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 Supreme  
 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. 92.

## CHAPTER 92.

## OF JURIES.

Qualification of  
grand jurors.

1. Every person not hereinafter exempted, or who may not otherwise by law be exempted, who shall have resided twelve months within the county, and shall, if within the County of Halifax, hold a freehold estate in such county of the yearly value of one hundred and twenty dollars, or be possessed of a personal estate of the value of two thousand dollars, or, if in any other county, hold a freehold estate of the yearly value of sixty dollars, or be assessed for county rates in respect of real or personal property or both, of the value of one thousand dollars or upwards, shall be qualified to serve as a grand juror for such county.

Qualification of  
petit jurors.

2. 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.

Persons exempt-  
ed from serving  
on juries.

3. 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, Treasurer, Attorney-General, Commissioner of Public Works and Mines, and Commissioner of Crown Lands, Judges and Registrars of Probate, the Superintendent of Education and the clerk in his office, resident officers and other employés 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, members of the Corporations of the City of Halifax and towns of Dartmouth and Pictou, 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

anks, 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 new summons shall be issued for jurors to supply the place of jurors not attending as hereinafter directed.

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Jurors only liable to serve once in three years.

4. The sessions shall once in every alternate year from among their number appoint a committee of not less than three justices, resident in different sections of the county or district, for the purpose of preparing and revising the grand and petit jury lists of the county or district, 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.

5. 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.

6. The General Sessions for the County of Halifax shall, in addition to the committee of justices 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.

7. Except as hereinafter otherwise provided, every county or sessional district where a county is divided into districts, shall continued to be divided into eight sections arranged by the court of general sessions; such sections to contain, as nearly as possible, an equal amount of population; and the committee appointed by such sessions shall return separate lists of the persons qualified to serve as grand jurors.\*

Counties or sessional districts to be divided into sections.

8. The lists shall be valid if a majority of the justices appointed shall act in the compilation or return thereof.

Lists valid if majority of committee act.

9. 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 grand jurors to contain names, additions, &c.

10. 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.

Lists of petit jurors, like particulars.

11. When the list of jurors shall have been completed by the committee, a copy alphabetically arranged shall be

Copies of jury lists to be posted; notice to be

## CHAP. 92.

given thereon,  
 &c.; errors or  
 omissions in.

given by them to the Clerk of the Peace, 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 sessions 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 lists  
 furnished to  
 prothonotary,  
 effect of omis-  
 sions, &c.

12. 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 persons  
 to be struck off  
 or added.

13. The justices, 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 the sessions or 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 post-  
 ed in prothono-  
 tary's office;  
 names drawn to  
 be marked.

14. 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.

Remuneration  
 to committee  
 revising lists.

15. The grand jury, in general sessions, shall vote annually a compensation of one dollar and fifty cents to each of the committee of justices 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.

Improperly in-  
 serting or  
 omitting names  
 in lists, &c.

16. Any justice 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.

When jurors  
 not drawn for  
 current year.

17. In any county or district where grand or petit jurors have not been drawn for the current year, a special sessions may appoint a committee of justices 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.

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18. Revised lists of grand and petit jurors, hereafter to be prepared, shall be in the form of the Schedule hereto annexed.

Form of revised lists.

19. 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 to be written upon tickets, &amp;c.

20. The committee of justices to revise the lists shall be chosen biennially, but shall continue in office until their successors are appointed.

Revising committee chosen biennially, duration of.

21. The committee appointed for the County of Halifax shall also prepare and annually revise a list of those persons not qualified to serve as grand or petit jurors, and shall return such list, alphabetically arranged, to the Clerk of the Peace, which list shall be the list from which the petit juries for the Sessions at Halifax shall be drawn; and such petit juries shall be drawn, summoned and sworn in the same manner, and subject to the same rules and penalties as petit juries in the Supreme Court.

Lists of petit jurors for Halifax sessions, how prepared.

22. The inhabitants residing within the District of Saint Mary's shall alone be liable to attend as jurors at the sessions held in the district, and they shall not be liable to attend as jurors at the sessions held at Guysborough; but nothing in this section shall be construed to exempt such persons from their liability to attend as jurors at the Supreme Court at Guysborough.

Liability of persons in Saint Mary's district to serve as grand jurors.

23. The Clerk of the Peace for the District of Saint Mary's shall draw from the list a grand jury on the last day of the sittings or term of the sessions, to be summoned to attend the next term or sittings of the court.

Saint Mary's district grand jury, how drawn for sessions.

24. The Prothonotary, 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 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 seven of this Chapter.

Names of grand and petit jurors to be placed by prothonotary in separate boxes.

Compartments, &amp;c.

25. During the sitting of the Court on the last term in each year, the Prothonotary associated with two justices

Grand jury, how drawn and summoned.

**CHAP. 92.** 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 or general sessions 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 Peace 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.

Grand jury for  
Guysborough  
sessions, how  
drawn, &c.

26. The Prothonotary for the County of Guysborough, immediately after drawing the grand jury for the Supreme Court, shall draw in the usual mode from the compartments of the grand jury box allotted to those portions of the County not included in the District of Saint Mary's, a grand jury to attend at the sessions in Guysborough, who shall be summoned in the usual manner, and shall return the names of such grand jury into the box; such drawing shall not exempt them from serving as grand jurors at the Supreme Court, but they shall not be liable to serve as jurors at the sessions oftener than once in three years.

Foreman of  
grand jury, how  
chosen.

27. 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.

28. At each term of the Supreme Court the Prothonotary, or (in case the same person is both Clerk of the Peace 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. 92.

29. 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.

30. 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 25 and 28, then and in such case it shall be lawful for the Prothonotary, associated with two justices appointed by the Custos, 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 Custos 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. Provision for drawing jury in certain cases.

31. When twelve do not concur, a majority of two-thirds of the grand jurors present at any general sessions of the peace shall have power to make presentments and transact all other county business; provided that no grand jury shall be composed of less than thirteen members. Two-thirds of grand jury may make presentments. Proviso.

32. 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 shewn 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. Court may order special jury, upon motion.

33. 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 Special juries, how drawn, &c.



**CHAP. 92.** 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** nothing in this section shall be construed to conflict with the provisions of section 6 as to the County of Halifax.

Proviso.

Petit juries;  
panels of.

34. 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. In Halifax the panel shall consist of thirty-six jurors.

Petit juries for  
sittings at Halifax.

35. There shall be two panels of jurors drawn and summoned for each sittings at Halifax, the first whereof shall be summoned for and bound to attend on the first Wednesday of such sittings, and thence until the second Wednesday thereof, and the other shall be summoned for and bound to attend on the second Wednesday thereof, and thence until the termination of the sittings, except at the Michaelmas Sittings, when the first panel shall again attend on the third Wednesday for a week; and the respective panels shall so continue to attend by alternate weeks until the termination of the sittings.

Second panel for  
Halifax sittings,  
how drawn,  
summoned, &c.

36. At each term of the Supreme Court at Halifax, the Prothonotary in open court, in addition to drawing the number of names as by the last section is directed to form the ordinary panel of petit jurors, shall also draw from the petit jury box a number of names to form a second panel of thirty-six petit jurors, for the trial of criminal causes at the then ensuing sittings, and the same course shall be pursued in preparing and signing the lists thereof, and in issuing and delivering writs of *venire facias* therefor, and in summoning such jurors, as is directed with respect to the first mentioned panel of petit jurors in and by the next preceding section. All jurors required to attend such sittings shall be subject to the penalties for non-attendance by this Chapter established.

Extra panel of  
jurors for Halifax.

37. 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.

38. 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 Antigonishe 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.

39. A jury impannelled 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.

Jury impannelled when not to be discharged.

40. 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.

Panel to be called on first day, absent jurors fined.

41. 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.

Second panel, when not called returned as not drawn.

42. 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.

Names of jurors not attending to be returned to box, and others summoned forthwith.

43. Any grand juror who, having been duly summoned, shall not attend, shall be fined not less than two nor more than eight dollars for each day's neglect.

Grand jurors finable for non-attendance.

44. Any petit or special juror who shall not answer to his name when called, and by the affidavit of the Sheriff shall appear to have been duly summoned, shall forfeit his day's pay, and for each day's absence shall pay a fine of two dollars.

Fine for absence of juror.

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 five per cent., and the Prothonotary shall immediately lay such statement before the Court, if then sitting, or otherwise at the next

Fines, how levied; how, when, and to whom payable.

**CHAP. 92.** 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 County Treasurer for county purposes, and shall take his receipt therefor, which shall be laid before the Court at its next sitting.

**Jurors, number of in civil cases.** 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.

**Jurors not to be deprived of food, &c.** 47. The practice of keeping a jury without meat, drink, or any other comfort until they agree upon their verdict, is abolished.

**Pay of jurors.** 48. Each petit and special juror and talesman shall be entitled to receive and be paid the sum of one dollar per day, and each grand juror fifty cents, for his actual attendance as a juror at the Supreme Court, and every grand, petit and special juror, 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.

**List of jurors to be prepared, with their attendance and travel, to be paid out of county funds.** 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 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 county 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 county treasury, viz.: on the issuing of writ of mesne process, except in summary and subsummary 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.

**Accounts of receipts and payments.** 51. The County Treasurer shall keep an account of all receipts and payments under the two last sections, such account to be laid before the sessions 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 shewn on oath, which oath, if in writing, may **CHAP. 92.**  
be made before a justice of the peace.

53. In case of the illness of a juror, after he shall have Proceedings in case of illness of juror.  
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.

54. The Court or presiding judge may amend the lists Amendment of jury lists provided.  
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 Peace, to be laid before the revising justices.

55. The Prothonotary shall cause the names of the Special jury, how drawn and called or trial.  
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.

56. The Prothonotary shall cause the names of the petit Petit juries, how drawn and called on trial.  
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 Tales may be prayed by either party.  
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.

58. In all civil causes either party may peremptorily Challenges without cause allowed.  
challenge, if in Halifax four, if in any other county three, of the jurors or talesmen.

59. The general sessions in every county where the In counties divided into districts, sessions shall divide each district into four sections.  
Supreme Court sits only in the shire town and which is divided into districts and has a court of sessions for each district shall, where such division has not already been

**CHAP. 92.** made, at their first sitting, proceed to divide each of such districts into four sections, instead of eight sections as at present, such four sections to contain as nearly as possible an equal amount of population.

The committee of sessions shall return separate lists of qualified persons for grand jurors.

60. The committee appointed by the sessions 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 Peace; and the Clerk of the Peace for each district shall place the names of the grand jurors to be drawn for sessions duty for such district in a grand jury box, divided into four compartments, each compartment to contain all the names of grand jurors for one of such sections.

Names of grand jurors to be placed in box with 8 compartments, &c.

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.

Grand jurors, how drawn for sessions.

62. In drawing the grand jurors for sessions duties, the Clerks of the Peace shall draw the names of six grand jurors from each compartment in the usual manner.

Eight of such jurors to be in office for two years.

63. Eight of such jurors shall always continue in office for two years, and shall consist of the two first names drawn from each of such four compartments in each year.

After first panel, only sixteen names drawn annually.

64. After the drawing of the first panel of grand jurors under the provisions of this Chapter, sixteen names only, being four for each section, shall be annually drawn. This section shall be applicable to jurors for sessions only; and as well as the five next preceding sections, shall apply only to the counties described in section 59.

Duties of prothonotary performed by clerk of peace in certain cases.

65. The duties imposed by this Chapter on the Prothonotary shall be performed by the Clerk of the Peace where necessarily devolving on him.

Oath of grand jurors.

66. The oath of grand jurors in sessions shall hereafter be as follows:

You do swear that you will well and faithfully discharge the duties devolving on you as [*foreman, or grand juror,*] for the County of ———, to the best of your knowledge and ability. So help you God.

Not to conflict with Canada law.

67. Nothing in this Chapter shall be construed to contravene or conflict with any legislation (*intra vires*) of the Parliament of Canada.

SCHEDULE.

County of \_\_\_\_\_.

*The return of revising magistrates, of persons qualified to serve as grand, special or petit jurors.*

Township or settlement.	Christian and surname at full length, and whether senior or junior.	Trade, calling, or employment.	Appellation, by which known.

CHAPTER 93.

OF BARRISTERS AND ATTORNEYS.

1. No person shall practise as an Attorney or Barrister, unless he shall have been duly admitted. Attorneys and barristers admitted.

2. Every person intending to apply for admission as a Barrister or Attorney shall cause notice thereof to be posted up in the Prothonotary's office at Halifax at least one month before the commencement of the term; and his admission shall be moved for in open court within the first four days thereof. Month's notice to be posted of intention to apply for admission.

3. No person shall be admitted an Attorney or Barrister, unless he shall have actually served under articles of clerkship with some practising Barrister, whether such articles shall be the original articles for the whole term, or any transference thereof, or new articles for the residue of such term, for a period of four years, except as is hereinafter otherwise provided. Term of clerkship, preparatory to admission.

4. No person shall hereafter be received as an articulated clerk by any Barrister until he shall have undergone an examination as to his educational qualifications, and shall have produced a certificate of his moral character; which certificate, together with that of his having passed a satisfactory examination, and a copy of his collegiate degree, if any, shall be filed with his articles in the office of the Prothonotary at Halifax. Examination as to educational qualification.

## CHAP. 93.

Time from which service shall be reckoned.

Judges may make rules as to examination.

Rules for examination.

Annual examinations.

Unsatisfactory examinations.

Certificate filed.

Three years course.

5. The term of service shall commence from the time of filing a duplicate of the articles of clerkship, and the certificates required by the last section, in the Prothonotary's office in Halifax.

6. The judges of the Supreme Court may from time to time make rules regarding the examination of clerks applying to be articled, and the mode of conducting the same; and such rules made and published in the *Royal Gazette* shall have the force of law.

7. The Council of the Barrister's Society at Halifax shall make rules and regulations for the annual examination of law students and for the appointment of examiners, and shall specify the branches of the study of the law in which such students shall be so examined; and such rules and regulations shall be so framed as to give students in the country full opportunity of undergoing such examination in the counties where they reside.

8. Every law student shall be examined annually in accordance with such rules and regulations, and if such examination shall be satisfactory to the examiners, they shall grant a certificate to that effect to the student. No student shall be entitled to undergo an advanced examination until he shall have passed the preceding one.

9. If such examination be not satisfactory to the examiners, they shall direct the student to again present himself for examination at such future time as they may deem proper, but not exceeding one year and not less than four months from the date of such unsatisfactory examination; and he shall meanwhile continue to serve with a practising Barrister.

10. No person shall be admitted an Attorney or Barrister of the Supreme Court unless he shall have first filed in the Prothonotary's office at Halifax certificates signed by the examiners of his having passed such annual examinations to the satisfaction of the examiners.

11. Provided that any student, who shall have passed a first-class Preliminary Examination and obtained a certificate to that effect under the rules made in accordance with the provisions of Chapter 130 of the Revised Statutes, Third Series; who shall have passed the four examinations prescribed by the Council of the Barrister's Society, and who shall have served three years under articles of clerkship, may with the consent of the Barrister to whom he is articled, be admitted a Barrister of the Supreme Court; and for the purposes of carrying out the provisions of this section, the third and fourth examinations hereinbefore mentioned may be undergone by the student at the expiration of the third year of his clerkship.

12. The provisions of the four next preceding sections shall not apply to law students articted before the eighteenth day of April, 1872; but any such law student who shall have passed a first-class Preliminary Examination shall be entitled, with the consent of the Barrister to whom he is articted, to be admitted a Barrister of the Supreme Court, after he shall have served three years under his articles and shall have passed an examination satisfactory to the examiners; and any student articted before the eighteenth day of April, 1872, may, with such consent, be admitted at the expiration of four years' service on passing a satisfactory examination.

CHAP. 93.

Provisions for students at present articted.

13. Any student of the age of twenty-one years or upwards who shall file satisfactory certificates of his having complied with the requisites of the preceding sections of this Chapter, and of his good moral character from the Barrister with whom he last served, shall be entitled to be admitted an Attorney on taking the following oath:

Qualifications requisite for admission.

"I, A. B., do swear that I will truly and honestly demean myself in the practice of an 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;"—Anything herein contained to the contrary notwithstanding.

Attorney's oath.

14. A Barrister of any court in Great Britain or Ireland shall be entitled to be admitted to practise 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 application and of his good moral character, and also of his having served as an articted clerk for a term equal to that hereinbefore prescribed for articted clerks in this Province, and who shall undergo a satisfactory examination as hereinbefore provided for, shall be entitled to be admitted an Attorney on taking the foregoing oath: Provided, however, that Barristers of Her Majesty's Superior Courts in any of Her Majesty's Colonies in which the same privilege is 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.

Barristers and attorneys of Great Britain, Ireland or colonies entitled to admission on filing proper certificates.

15. An Attorney of the Supreme Court shall be entitled to be admitted a Barrister immediately after his admission as an Attorney.

Barristers, when admitted.



## CHAP. 93.

Attorney to allow only clerk or attorney to sue or defend causes in his name.

Barristers, their privileges and precedence; power of courts to control all practitioners.

No barrister to have over three clerks.

Practising barristers only to take clerks.

Notary public being barrister to take acknowledgments, &c., as justice of peace.

No fees for such services.

16. No Attorney shall permit any person not an Attorney, other than his articed clerk actually serving in his office, to sue out any writ of process, or to prosecute or defend any action in his name.

17. Barristers of the Supreme Court shall be Counsel, Advocates, Proctors and Solicitors of the Court of Equity, Court of Vice-Admiralty, Court of Error, Court for Divorce and Matrimonial Causes, 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 wholesome 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 mal-practice or misconduct.

18. No Barrister shall have at any one time more than three articed clerks.

19. No Barrister not actually practising his profession, except only the Prothonotary at Halifax being a Barrister, shall take or retain any clerk.

20. Every notary public, being a Barrister of the Supreme Court of this Province, 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 attestations of such witnesses in the same manner and to the same extent as a justice of the peace is now authorized to do. It shall not be necessary for any such Notary and Barrister to attach his notarial seal of office to any such certificate, and no certificate given or to be given shall be void for want of such notarial seal. No fee shall be charged or taken by any notary public for services performed under this section.

## TITLE XXIII.

## OF PROCEDURE IN CIVIL CASES.

## CHAPTER 94.

## OF PLEADINGS AND PRACTICE IN THE SUPREME COURT.

## GENERAL RULES: REGULATION OF PRACTICE; ETC.

1. The Judges at Halifax, except the Judge in Equity, may from time to time make general rules for altering, regulating and facilitating the practice of the Court, and all other rules and regulations for the dispatch of business, the prevention of the accumulation of arrears, the regulation of sittings, and hearing arguments in *banco*, the attendance of the Courts, and for the conducting of business in the Practice Court, and regulating all appeals from the decisions of a Judge at Chambers; but such rules shall not go into operation until they have been published in the *Royal Gazette*; and all rules made since the fourth day of April, A. D. 1853, are hereby confirmed.

Judges, except equity judge, to have power to make rules.

2. In all cases not otherwise provided for, the practice and proceedings of the Court shall conform as nearly as may be to the practice and proceedings of the superior courts of common law in force previous to the first year of the reign of King William the Fourth; and in all cases where the proceedings and practice of the superior courts of common law in England differ from each other, those of the Court of Queen's Bench shall be followed.

Practice and proceedings, how regulated in certain cases.

3. One of the judges shall sit once every week at Chambers or oftener, as business may require, and shall do any act relating to practice as heretofore, and all other acts that may be lawfully done by a single judge. It shall be discretionary with the judges to hold Chambers or not in the ordinary vacation, that is to say, between the end of July Term and the commencement of the autumnal circuits.

Chamber sittings to be held weekly.

4. It shall not be necessary to issue more than one summons for attendance before a judge at Chambers upon the same matter; and the party taking it out shall be entitled to an order, unless cause to the contrary be shown, or the judge shall refuse the same.

Only one summons for attendance necessary.

5. When a Judge has power to grant an order, he may in place thereof grant a rule *nisi* returnable at Chambers.

Rule nisi may be granted in certain cases.

## CHAP. 94.

Appeal from  
judge's deci-  
sion how ob-  
tained.

Cause of proce-  
dure in appeals.

6. The decisions and judgments of a judge at Chambers shall in all cases be subject to appeal to the Supreme Court in term, security for the costs of such appeal being given by the party appealing in the sum of forty dollars by a bond to the satisfaction of the judge who shall have given the judgment, and within a time to be limited by him.

7. In all cases of appeal from the decision of a judge at Chambers, the appellant shall obtain an order for the appeal from a judge; insert therein or append thereto the grounds of the appeal; shall file the same, together with the above security, within the period of ten days, unless the judge shall otherwise order; and shall, on argument of the appeal, be confined to the grounds set forth in the order or appended thereto.

## OF THE TERMS, SITTINGS AFTER TERM AND CIRCUITS.

Commencement  
and duration of  
terms at Hal-  
ifax.

8. There shall be two Terms of the Supreme Court held at Halifax annually—one to commence on the third Tuesday of July, and to continue for three weeks, if the business of the Court shall require such continuance, and the other to commence on the second Tuesday of December, and to continue for four weeks, if the business of the Court shall require such continuance.

Number of  
judges required  
to hear argu-  
ments, *in banco*.

9. Not more than five of the judges of the Supreme Court shall be required to hear arguments or sit in banc; and a number less than five, but not less than three, may sit for that purpose, and may give judgment in causes so heard, where the other judges are unable, from sickness, absence from the Province, interest in the cause, or any other sufficient reason, to attend; and the arguments may be heard in vacation, or in Term, as the judges may direct.

Separation of  
docket of argu-  
ments provided  
for.

10. As often as in the opinion of the judges the state of the docket of arguments in Halifax and the facilitating the business shall require it, the docket of causes shall be separated by the Prothonotary, under their direction, from time to time, into two parts, to be called the first and second divisions; and the causes therein shall be heard respectively by three of the judges; and when the judges before whom the same may be heard shall concur in their decision, such decision shall be as valid as if the whole Court had concurred therein; but when such three judges do not concur, the party against whom a decision shall have been given may require that such cause in which the judges have not concurred shall be entered on the docket for the then present or next ensuing term, to be re-heard in banc; and it shall be in the power of the three judges on the argument of any cause, or at any time before judgment, to direct that the same shall be heard as afore-

said by the full Court, at such time as the Court shall CHAP. 94.  
appoint.

11. The judges may, from time to time, in their discretion, by an order to that effect, extend and adjourn any Term to such period and for such time as they may deem necessary for the disposal of the causes on the docket.

Terms may be extended and adjourned.

12. There shall be two Sittings of the Supreme Court at Halifax annually,—one to commence on the first Tuesday of November, and to continue for four weeks, if business shall require such continuance, and the other to commence on the fourth Tuesday of April, and to continue for three weeks, if the business of the Court shall require such continuance; and the Court or the presiding judge is authorized to extend each of such Sittings for a further period of three days, if such extension should be deemed necessary, and for such further time as may be requisite in consequence of any trial being protracted beyond the periods now provided. At Halifax, on the first day of Sittings, the judges shall have the same powers as in Term; and where the Sittings are closed by the termination of the business, or of the allotted time, the judges shall sit for three days, if business so long require, with the same powers as in Term—motions relating to the business of the then Sittings to have precedence.

Commencement and duration of sittings at Halifax.

13. The judges may from time to time in their discretion, by an order to that effect, extend and adjourn the Sittings to such period and for such time as they may deem necessary for the disposal of the causes on the docket; and they may order an additional panel or panels of jurors to be drawn and summoned at any time during the sittings for such period as they may direct.

Sittings may be extended and adjourned by judges.

14. The judges shall have power from time to time, in their discretion, to direct that two extra Sittings of the Court shall be held at the same time in Halifax for the trial of causes, to commence and terminate at such periods as shall be prescribed in the order therefor; and, for that purpose, one or more panels of the petit jury shall be drawn for each of such Sittings of the number and in the manner now by law appointed for the regular Sittings; and such jurors shall be summoned in the same way, and shall be bound to attend, and shall be entitled to the same exemptions, and be subject to the like pains and penalties, and shall recover the same fees and compensation, as are now by law respectively provided in respect of petit jurors.

Two extra sittings may be held at same time in Halifax.

15. New notices of trial shall be required for such extra Sittings; and trials or any other business thereat shall be conducted on the same principles as in the regular Sittings; and such extra Sittings shall be continued for

Procedure at extra sittings.

**CHAP. 94.** the period prescribed, or until all the civil and criminal causes ready for trial, including all appeals, shall be tried and disposed of.

Arrangement of docket at extra sittings.

16. The docket of causes for trial shall be arranged by the judges at such extra Sittings in such a way as shall appear to them most convenient and conducive to the ends of justice; and the order of the judges for such extra Sittings shall take effect from and after the publication thereof in the *Royal Gazette*; but the panels of petit jurors may be drawn before such publication.

Attendance of jurors provided for.

17. The grand jury shall attend at the Sittings, but shall not be required to attend at the Terms of such Court; and all jurors required to attend such Sittings shall be subject to the penalties for non-attendance, now by law established.

Division of province into circuits.

18. There shall be five circuits in the Province: The Midland, the Shore, the Western, the Eastern, and the Cape Breton Circuits.

*The Midland Circuit* shall embrace the Counties of Hants, Colechester 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, Antigonishe and Guysborough.

*The Cape Breton Circuit* shall embrace the Counties of Cape Breton, Victoria, Inverness and Richmond.

Commencement and duration of circuit courts.

19. The Supreme Court shall sit twice a year 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 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.

## QUEBENS.

*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.

*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.

## ANTIGONISHE.

*At Antigonishe.*—On the first Tuesday of June, and second Tuesday of October; and to sit seven days in each term, exclusive of Sundays.

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## 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.

## 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.

Sittings to be exclusive of Sundays.

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 sittings limited.

20. 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 as otherwise provided in this Chapter.

Extra sittings provided for in certain cases.

21. The presiding judge, if any large arrears of civil or criminal business, shall be found to exist, at the end of the Term or Sittings of any Circuit Court, that may hereafter be held by him, shall appoint a subsequent day, in which an extra Sittings of the Court shall be held in the same county, of which the Prothonotary shall immediately give notice, by publication in the local newspapers (if any) and by advertisement in five of the most public places within the county. The grand jury shall not attend at such Term or Sittings, but the Prothonotary shall draw in

open Court, in the same way as in the regular Term a panel of petit jurors therefor, consisting of the number, of twenty-four, and shall have the list signed by the two justices associated with him, and by the presiding judge, and shall issue writs of *venire facias*, for the summoning of such jury, and shall deliver the same to the Sheriff, at least ten days before such Term; and the Sheriff shall thereupon cause such jurors to be summoned at least four days before the time appointed in such writ. CHAP. 94.

22. The jurors so summoned shall be bound to attend accordingly, and be subject to such fines and penalties, and entitled to such fees and compensation as are now by law respectively provided in respect of petit jurors. Attendance of jurors may be enforced.

23. At such extra Terms or Sittings, all jury causes, civil and criminal, and those only, which shall have been at issue and ready for trial when such proclamation of adjournment shall have been made, shall be tried and disposed of without any new notice of trial. No new notice of trial required.

24. In case a judge shall be prevented from arriving at the place on the day appointed for holding the Court or such extra Term or Sittings thereof, the Sheriff shall give public notice that the Court will meet on the day next following such day; and shall continue to give such notice from day to day for three successive days, unless a judge shall in the meantime arrive. Provision in case of non-arrival of Judge.

#### PLEADINGS.

##### WRITS OF MESNE PROCESS.

25. All personal actions shall be commenced by writ of summons or replevin, and in case of absconding debtors, summons or attachment, in the forms set forth respectively in Schedule A, numbers 1, 2, 3, 4 and 5; and where the amount claimed is under eighty dollars, the writ shall be marked on the back thereof, summary cause; but no action for the recovery of any debt shall be commenced in the Supreme Court where the amount sought to be recovered is less than twenty dollars; and every writ shall be subscribed with the name of the plaintiff issuing the same, and with his place of abode, or with the name of the attorney issuing the same. Personal actions how to be commenced.

26. It shall not be necessary to mention any form of action in the writ or other proceedings. Form of action need not be mentioned.

27. The teste of all writs, whether of mesne process or otherwise, is abolished, and every writ shall be dated by the Prothonotary the day it is issued; and every writ of summons and every concurrent writ shall be served within six months from the day it is issued. Teste of writs abolished.

28. The writ shall contain the declaration according to the practice adopted in summary causes, and to the forms Writ shall contain declaration.



**CHAP. 94.** in Schedule B, except in very special cases, where the declaration may be annexed or served separately; but no charge shall be allowed therefor, unless, on taxation, the judge shall deem such course to have been proper under the circumstances.

Warrants need not be filed.

29. It shall not be necessary to file warrants of attorney to prosecute or defend.

Notice to be endorsed on writ.

30. Every writ by which an action is commenced, except in ejection, shall be endorsed with the notice in the form in Schedule A, number 10.

Affidavit to hold to bail when to be made.

31. If a plaintiff in any action commenced by summons in which the defendant is now liable to arrest, whether upon the order of a judge or commissioner, or without such order, shall, at or after the commencement of such action, by affidavit of himself, or some other person, shew, to the satisfaction of a judge or commissioner, that such plaintiff has a cause of action against the defendant or defendants to the amount of twenty dollars or upwards, or has sustained damage to that amount, and that the plaintiff has probable cause for believing, and does believe, that the defendant is about to leave the Province, and that he fears that the debt will be lost unless such defendant is forthwith arrested; such judge or commissioner may, without requiring in such affidavit any statement of the plaintiff's ground for such belief, by a special order direct that such defendant so about to quit the Province, shall be held to bail for the amount of the debt or damage sworn to, or, in the case of unliquidated damages, for such sum as the judge or commissioner shall think fit; and thereupon the plaintiff within the time expressed in such order, but not afterwards, may sue out one or more writ or writs of capias into one or more different counties, as may be required, against any such defendant, so directed to be held to bail, which writ shall be in the form in Schedule A, number 6: provided always, that nothing in this section contained shall operate to prevent a defendant so arrested from negating, under affidavits before a judge or commissioner, the fact of his being about to leave the Province; and upon such affidavit, if the same is not contradicted on the part of the plaintiff, such judge or commissioner shall, in his discretion, order his discharge from custody with or without costs, or direct that the costs of the same be costs in the cause. Where a defendant is ordered to be held to bail under this section, after he has appeared to the action, the form of the bail bond in the Schedule A, number 26, shall be modified accordingly.

as issued.

Proviso.

Bail bond.

Bail how taken.

32. The Sheriff shall, within one month after the date of such capias, but not afterwards, proceed to arrest such defendant thereupon, and he shall remain in custody until

he shall have given a bail bond to the Sheriff or shall have made deposit of the sum endorsed on such writ of capias, together with forty dollars for costs; and the Sheriff shall make return of his writ immediately upon the execution thereof, or at the expiration of the month if not executed.

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Deposit.

33. Where the defendant shall be described in the process or affidavit to hold to bail by initials, or by a wrong name, or without a Christian name, the defendant shall not be discharged out of custody, or the bail bond delivered up to be cancelled, if it shall appear by the affidavit that due diligence has been used to obtain a knowledge of the proper name.

Provision in case of wrong description of defendant.

34. Where a defendant is committed to jail on mesne process, and the plaintiff does not proceed to trial in the Term next after his committal, or in the Sittings thereafter, the defendant shall be discharged;—provided he was ready for trial at such Term or Sittings, and had pleaded issuably to the declaration, if served upon him, and had given notice of his readiness for trial on the first day of such Term or Sittings, or before, or when the cause is called; and provided the cause had been called for trial; and also provided the Court shall not, on sufficient cause shewn on affidavit, be of opinion that the defendant ought not to be discharged.

Discharge of defendant when under arrest if plaintiff does not proceed.

*Service and Return of Writs, etc.*

35. There shall be no special return days for writs of summons, writs of replevin, and writs of attachment and summons against absent or absconding debtors, or their agents, or trustees, or writs of certiorari; but such writs shall be returnable within ten days after the service thereof, if the defendant or party served shall reside in the county in which the action is brought; within twenty days after service if he shall reside in any other county, except in the Island of Cape Breton; and within thirty days if he shall reside in the Island of Cape Breton and the action is brought in any county not in the Island; or if he shall reside out of the Island and the action is brought in any county within the Island; and judgment may be entered against the defendant if he shall not appear and plead within four days after the expiration of such period of ten, twenty, or thirty days, as the case may be; and in cases where a writ of summons, with the usual notice endorsed, is served in any county other than that specially named in the direction of the writ, the defendant shall be entitled and required to appear and plead in the same number of days as if the county wherein he is served had been specially named in the writ.

Writs, when to be returnable.

CHAP. 94. 36. The writs shall summon the defendant to appear  
 Form of writs of "within ten, twenty, or thirty days [as the case may be]  
 summons. after the service of this writ."

How directed  
and executed.

37. Writs shall be directed thus: "To the Sheriff of \_\_\_\_\_  
 or to any other of our Sheriffs;" and may be executed by  
 any Sheriff within his bailiwick; and concurrent writs may  
 be issued.

Concurrent  
writs, how  
marked.

38. A writ for service within the Province may be  
 issued and marked as a concurrent writ with one for  
 service out of the Province; and a writ for service out of  
 the Province may be issued and marked as a concurrent  
 writ with one for service within the Province.

Sheriff's endorse-  
ment on writ.

39. The Sheriff shall, upon the receipt of every writ  
 endorse thereon the time at which the same was received  
 by him; and shall in his return on every writ of mesne  
 process state the very day on which it was served; and  
 shall not be allowed any fees on process served by him  
 where the return is not so made.

No service of  
writ on Lord's  
day.

40. No person upon the Lord's day shall serve or exe-  
 cute any civil writ or process; but the service thereof  
 shall be void, and the party serving the same shall be  
 liable to the party aggrieved, as if he had executed the  
 same, without any writ or process.

Service on corpo-  
ration.

41. Writs against a corporation may be served on the  
 principal officer, or on the clerk or secretary.

Writ, how  
served.

42. The service of the writ, whenever practicable,  
 shall be personal, and shall be made within six months  
 from the day of its issue; but the plaintiff shall be at  
 liberty to apply, from time to time, if necessary, on affi-  
 davit to the Court or a judge, who may, if satisfied that  
 the writ has come to the knowledge of the defendant, or  
 that he wilfully evades service, and that reasonable efforts  
 have been made to effect personal service, order that the  
 plaintiff be at liberty to proceed as if personal service had  
 been effected, subject to such conditions as to the Court  
 or a judge may seem fit.

Proceedings  
against British  
subject non-resi-  
dent in Pro-  
vince.

43. In case any defendant, being a British subject, is  
 residing out of this Province, it shall be lawful for the  
 plaintiff to issue a writ of summons in the form in Sched-  
 ule A, number 7, which writ shall bear the endorsement  
 contained in the said form purporting that such writ is for  
 service out of this Province; and the time for appearance  
 by the defendant to such writ shall be regulated by the  
 distance from Nova Scotia of the place where the defend-  
 ant is residing, having due regard to the means and neces-  
 sary time for postal or other communication. And it shall  
 be lawful for the Court or judge,—upon being satisfied by  
 affidavit that there is cause of action which arose within  
 this Province, or in respect of a breach of a contract made

within the Province, in whole or in part, or intended to be executed in whole or in part within this Province, or, in respect of a contract made and entered into between parties, one of whom, at the time of making such contract, shall reside within this Province, and that the writ was personally served upon the defendant, or that reasonable efforts were made to effect personal service thereof on the defendant, and that it came to his knowledge, and either that the defendant wilfully neglects to appear to such writ, or that he is living out of the Province in order to defeat or delay his creditors,—to direct from time to time that the plaintiff shall be at liberty to proceed in the action in such manner, and subject to such conditions as to such Court or judge may seem fit, having regard to the time allowed for the defendant to appear being reasonable, and to the other circumstances of the case: provided always that the plaintiff shall, before obtaining judgment, prove the amount of the debt or damages claimed by him in such action, either before a jury upon a writ of inquiry, or before a judge.

44. In all cases when it shall be made to appear by affidavit, to the satisfaction of the Court or a judge, that a defendant is absent from the Province, so that personal service of process cannot be effected on him, or that he is remaining abroad so as to evade service, and that he has an agent within the Province, and also that the plaintiff has a good and available cause of action against the defendant, the Court or a judge may make an order for the service of process on the agent, which service shall be deemed good and sufficient service on the defendant; and the plaintiff may thereupon proceed in the action to judgment and execution, as if such defendant had been personally served.

Agent may be served in absence of defendant in certain cases.

45. The Court or a judge may, on sufficient cause shewn by the agent, allow a reasonable time for such agent to communicate such writ to the defendant.

Time may be allowed to agent.

46. If the plaintiff shall shew to the satisfaction of the Court or a judge, that after due diligence and inquiry 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, 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 process.

Publication in *Royal Gazette* sufficient service in certain cases.

47. The defendant shall be at liberty to appear and

Defendant may

**CHAP. 94.** plead to such action at any time previous to judgment signed.

appear and plead.

Re-hearing may be obtained within three years.

48. The defendant, at any time within three years after judgment signed, may, on application to the Court or a judge, on affidavit accounting for his non-appearance and disclosing a defence on the merits, obtain an order to appear and plead, and for re-hearing of the cause, which order shall operate as a stay of any execution issued on such judgment; but the judgment obtained shall, until removed, stand as security to the plaintiff for the amount thereof.

Execution, how to issue.

49. No execution shall issue on such judgment until the plaintiff shall have given security to the satisfaction of the Court or a judge for the re-payment of all moneys levied thereunder in case the judgment should be reversed.

Proceedings against foreign-er non-resident in Province.

50. In any action against a person residing out of the Province, and not being a British subject, the like proceedings may be taken as against a British subject resident out of this Province, save that in lieu of the form of the writ of summons in Schedule A, number 7, the plaintiff shall issue a writ of summons according to the form in Schedule A, number 8, hereto, and shall in manner aforesaid serve a notice of such last-mentioned writ upon the defendant therein mentioned, which notice shall be in the form in the said Schedule, number 8; and such service, or reasonable efforts to effect the same, shall be of the same force and effect as the service of the writ of summons in any action against a British subject resident abroad, and, by leave of the Court or a judge, upon their or his being satisfied by affidavit as aforesaid, the like proceedings may be had and taken thereupon.

Writ may be amended.

51. If the plaintiff or his attorney shall omit to insert in or endorse on any writ or copy thereof any of the matters required by this Chapter to be inserted therein, or endorsed thereon, such writ or copy thereof shall not on that account be held void; but it may be set aside as irregular, or amended upon application to be made to the Court out of which the same shall issue, or to a Judge; and such amendment may be made upon any application to set aside the writ upon such terms as to the Court or judge may seem fit.

Substitution of forms no objection.

52. If either of the forms of writ of summons contained in Schedule A, numbers 7 and 8, shall by mistake or inadvertence be substituted for the other of them, such mistake or inadvertence shall not be an objection to the writ or any other proceeding in such action, but the writ may,—upon an *ex parte* application to a judge, whether before or after any application to set aside such writ or any proceeding thereon, and whether the same or notice thereof shall have

been served or not,—be amended by such judge without **CHAP. 94.**  
costs.

53. Any affidavit of service of writ or notice, or any other affidavit for the purpose of enabling the Court or a judge to direct proceedings to be taken against defendants out of the Province, or by such defendants, may be sworn before any judge of a court of record or justice of the peace in any of Her Majesty's dominions, or before any consul-general, or consul, vice-consul or consular agent appointed by Her Majesty at any foreign port or place, whose official character and signature shall be certified under the hand and seal of a notary public, or before a commissioner appointed to take affidavits, and do acts without the Province. Every affidavit so sworn may be used and shall be admitted in evidence; provided it purport to have been sworn before such official as in this section mentioned.

Affidavit of service how sworn.

54. In all civil suits the cause shall be conducted in the names of the real parties.

Cause how conducted in civil suits.

55. Notice of trial may be endorsed on writs of summons.

Notice of trial.

*Writs of Inquiry.*

56. Writs of inquiry shall be made returnable in ten days after the issuing thereof; and the party plaintiff shall be entitled to judgment for the amount awarded him with costs in fourteen days after the execution of the writ.

Execution and return of writs of inquiry.

*Of the Writ of Certiorari.*

57. Previous to issuing a writ of *certiorari* the judge or commissioner shall require the person applying therefor to file sufficient bail, in such reasonable amount as the judge or commissioner shall direct, to respond the judgment to be finally given in the cause; and the judge or commissioner shall endorse on the writ the amount for which bail is filed, with the names of the bail, and also the date when the writ was allowed, and shall put his signature thereto.

Bail to be filed before issue of writ.

58. In all causes and proceedings brought up by *certiorari*, the Court may inquire into the facts anew, if it shall seem to them to be necessary, and may order a trial hereof by jury.

Procedure under writ.

PARTICULARS.

59. The plaintiff shall annex, or endorse on his writ and copy thereof, the particulars of his claim in the form, or to the effect contained in Schedule A, number 9, in all

Particulars to be endorsed on writ.

**CHAP. 94.** cases where the claim is for a debt, or liquidated demand in money, with or without interest arising upon a contract express or implied.

**Effect of non-delivery.** 60. If such particulars are not given, the plaintiff shall not be entitled to final judgment on non-appearance of defendant.

**Credits to be given.** 61. The plaintiff's particulars shall give credits, if there be any.

**Set-off must be pleaded.** 62. A set-off by defendant shall be pleaded, and he shall annex to, or endorse on his plea, and copy thereof, particulars of such set-off, giving credits, if there be any, and in default, his plea may be treated as a nullity; such particulars shall be assimilated in form to those in Schedule A, number 9.

**Effect of adoption of particulars.** 63. Neither plaintiff nor defendant shall be at liberty to adopt his adversary's particulars, without at the same time admitting the adverse side of the account or claim as presumptive proof thereof.

**Summons and order, how obtained.** 64. A summons for particulars and order thereon may be obtained from a judge or the Prothonotary, by either party, without the production of any affidavit, but a summons and order for further or better particulars stating dates, credits, &c., or for amending particulars, shall be granted only by a judge, and upon affidavit.

**Time to plead after particulars delivered.** 65. A defendant shall be allowed the same time for pleading, after the delivery of particulars under a Judge's or Prothonotary's order, which he had at the return day of the summons for particulars: nevertheless, judgment shall not be signed until the day after the delivery of particulars, unless otherwise ordered by a judge or prothonotary, and the judge or prothonotary may order further time.

**Further and better particulars.** 66. A judge may grant an order for further or better particulars, stating dates, credits, &c., or for amending particulars, upon affidavit and without summons therefor.

#### APPEARANCE, AND JUDGMENT FOR NON-APPEARANCE.

**Common bail abolished.** 67. Common bail is abolished, and the appearance shall be in the form in Schedule A, number 12.

**Judgment by default.** 68. In case of non appearance, where particulars are annexed or endorsed, the plaintiff may, after the time for appearance has elapsed, sign final judgment, which may be entered in the form given in Schedule A, number 11, and on which no proceeding in error shall lie, for any sum not exceeding the sum mentioned in the particulars, with interest at the rate specified, if any, to the date of judgment, and taxed costs; but the plaintiff shall not, in such case, be entitled to recover any sum beyond the sum so mentioned, with interest and costs.

69. A party may appear at any time before judgment by default; and, if he appear after the time specified in the writ of summons, he shall, after notice of such appearance to the plaintiff or his attorney, as the case may be, be in the same position, as to pleadings and other proceedings in the action, as if he had appeared in time: provided always that a defendant appearing after the time appointed by the writ shall not be entitled to any further time for pleading or any other proceeding than if he had appeared within such appointed time.

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Appearance.

70. Every appearance by the defendant in person shall contain an address, at which it shall be sufficient to leave all pleadings and other proceedings not requiring personal service; and if the address be not given, the plaintiff may proceed by posting the proceedings in the Prothonotary's office, without further service, until the true address be given.

Appearance in person to contain address of defendant.

71. In case of non-appearance, where the particulars are not given, judgment by default may be signed at the expiration of the time for appearance; but no costs shall be allowed in respect of assessment of damages unless it shall appear that the plaintiff could not conveniently furnish the particulars at the time of the issue of the writ.

Judgments where particulars not given.

72. In actions for the recovery of debts, where a judgment for default has been marked, the Court or a judge may assess the damages on competent evidence in writing, or *vivâ voce*; and the attendance of witnesses and the production of documents before the Court or a judge may be enforced by subpoena, in the same manner as upon the trial of a cause before a jury. Upon such assessment, signed by the Judge or Prothonotary, being filed, the costs in the action may be taxed and final judgment entered thereon.

Assessment of damages, how made.

73. Either party, upon due application to the Court or a judge, may have the assessment made by a jury, or at any assessment to be made before the Court, if the Court should think fit, by a special jury; and at any assessment before a judge, he may order such assessment to be made by a jury.

Assessment by jury or before court.

74. In any action brought against two or more defendants, where the writ of summons is endorsed in the special form hereinbefore provided, if only one or more of the defendants shall appear, and another or others of them shall not appear, it shall be lawful for the plaintiff to sign judgment against such defendant or defendants only as shall not have appeared, and to issue execution thereupon; in which case he shall be taken to have abandoned his action against the defendant or defendants who shall have appeared, and such defendant or defendants shall be en-

When only some of several defendants appear.



**CHAP. 94.** titled to their costs; or the plaintiff may, before issuing such execution, proceed against such defendant or defendants as shall have appeared, stating, by way of suggestion, the judgment obtained against the other defendant or defendants who shall not have appeared; in which case the judgment so obtained against the defendant or defendants who shall not have appeared shall operate and take effect, whether the plaintiff succeeds against the other defendant or defendants or not.

*Opening Judgment.*

Parties admitted to defend after final judgment.

75. It shall be lawful for the Court or a judge, upon such terms as to costs or otherwise as they shall think fit, at any time within one year, after final judgment, to let in the defendant in any action or appeal to defend the same, upon an application, supported by satisfactory affidavits, accounting for his non-appearance and disclosing a defence upon the merits with the particular grounds thereof; and affidavits shall not be received in reply, unless the Court or a judge shall otherwise order.

SUMMARY AND APPEAL CAUSES.

Debts under \$80, how to be recovered.

76. All actions for the recovery of debts, under eighty dollars, shall be brought in a summary manner, and the presiding judge may determine the same, or order a trial by jury.

Appellant to enter appeal on docket.

77. In appeal causes the appellant shall cause his appeal to be entered on the docket of summary causes, and in case he shall neglect to enter the same the original judgment shall be affirmed, at the instance of the opposite party, with costs.

Appeals to be tried anew.

78. In all causes brought up by appeal and contested, the Court shall try the same anew.

Jury, how obtained.

79. In summary and appeal causes the application for a jury must be by affidavit to the Court; and it shall be discretionary with the Court to grant the same.

Judgment upon appeal, how given.

80. In appeal causes where the original judgment is affirmed, the final judgment shall include the debt and costs below, with the further costs; and execution shall issue for such debt and costs, or for costs only, as the case may require. Where the original judgment is reversed after the same has been enforced, the final judgment shall include the amount levied under the original judgment, together with the costs of the reversal.

Respondent's remedy after judgment.

81. In appeal cases the respondent may take out execution against the appellant, or have recourse to the appeal bond.

Summary causes, when to be tried.

82. In future the summary causes, in all the counties except Halifax, shall be brought to trial and heard on the

first day of the term, and the jury causes taken up immediately afterwards. **CHAP. 94.**

83. At Halifax summary causes shall be set down and tried on the first day of the sittings. Trial of summary causes at Halifax.

84. All summary, sub-summary, appeal, and other causes returnable at Halifax, which can now be heard in a summary way, may be tried before a judge at chambers in vacation, if the plaintiff in the suit, or the appellant or appellee in cases of appeal, shall desire to bring on the trial before the then next sittings of the Supreme Court; and causes other than summary may be tried in like manner, if both parties consent thereto in writing. May be tried before judge at Chambers.

85. Ten days' notice shall, in such case, be given to the defendant, or by either the appellant or appellee in case of appeal, or his attorney, of the time and place of trial, if the defendant resides in the county;—twenty days if in any part of the Province, except Cape Breton; and thirty days if within that Island. Notice of trial.

86. In all other counties such causes, if not disposed of on the first day of the term, may be tried either in Court or at chambers on any other day in term. How tried in other counties.

87. All parties required to attend and give evidence at the trial or to produce books, papers, deeds, or other documents, and not appearing and not producing such documents, shall be subject to the same penalties as if the trial had taken place before the Court, and the judge shall have the same control over the proceedings. Parties bound to attend, &c.

88. The Court may, from time to time, make rules to regulate the practice, and direct when and where such trials shall take place. Court may regulate practice.

#### AFFIDAVITS.

89. The addition and place of residence of every person making affidavit, except the same is made in a cause by any of the parties thereto, shall be inserted therein. Additions of parties must be inserted.

90. Where an affidavit is made before a judge, a Prothonotary or a commissioner of the Court, by a party who from his signature appears to be illiterate, the party taking the affidavit shall state in the jurat that it was read and explained or words to that effect. Affidavit of illiterate person.

91. 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. No costs shall be allowed for any affidavit, or part of an affidavit substantially departing from this rule. No affidavit shall be read, or made use of in any matter depending in Court, in the jurat of which there shall be any interlineation or erasure. Rule for preparing affidavit. Alteration in jurat.

**CHAP. 94.** 92. Upon motions founded upon affidavits, it shall be lawful for either party, with leave of the Court or a judge, to make affidavits in answer to the affidavits of the opposite party, upon any new matter arising out of such affidavits, subject to all such rules as may hereafter be made respecting such affidavits.

*Affidavit in answer.*

MISNOMER AND JOINDER OF PARTIES.

93. No plea in abatement for misnomer shall be allowed in any action; but in cases of misnomer the defendant may, upon a judge's summons, founded on an affidavit of the right name, cause the writ to be amended at the cost of the plaintiff by inserting the right name; and in case such summons be discharged, the judge may give costs in his discretion.

*Plea of abatement for misnomer not to be allowed.*

94. The joinder of too many plaintiffs shall not be fatal to any action, but the plaintiff or plaintiffs entitled may recover.

*Joinder of too many plaintiffs not fatal.*

95. The defendant in any action in which there is more than one plaintiff, on pleading a set-off, may obtain the benefit of the set-off on proving either that all the parties named as plaintiffs are indebted to him, notwithstanding that one or more of such plaintiffs was or were improperly joined, or on proving that the plaintiff or plaintiffs, or any or either of them who establish their right to maintain the action, was or were indebted to him.

*Set-off against plaintiff improperly joined.*

96. The non-joinder of a person as plaintiff in any action shall be a variance to be amended at, or at any time before, the trial by the Court or a judge, if it shall appear that such non-joinder was not for the purpose of obtaining an undue advantage, and that injustice would not be done by amending, and that the omitted party consent to be joined as a co-plaintiff: provided, however, that no such amendment shall be made if the defendant shall, at or before the time of pleading, have given notice to the plaintiff that he objects to such non-joinder; and also that when a plaintiff shall be added, the defendant shall be at liberty to withdraw his plea, and allow judgment to be entered against him, in which case the defendant shall be entitled to tax his costs up to the time of such plaintiff's being added, and have execution against the plaintiff therefor.

*Non-joinder of plaintiff.*

97. In case such notice be given, or any plea of non-joinder be pleaded, the plaintiff shall be at liberty, without any order, to amend the writ and other proceedings, by adding the name of the person alleged to have been improperly omitted as plaintiff on payment of costs, and with liberty for the defendant to plead anew.

*How amended.*

98. The Court or a judge may, at any time before, or at the trial, order that any person or persons originally

*Parties joined as plaintiffs, how struck out.*

joined as plaintiff or plaintiffs shall be struck out from such cause, if it shall appear to the Court or a judge by affidavit that the person or persons to be struck out as aforesaid were originally introduced without his or their consent, or that such person or persons consent in writing to be struck out. In case such amendment as in this and the preceding sections be made at the trial, it shall be made upon such terms as to the postponement of the trial, or otherwise as the presiding judge shall deem proper.

99. Where too many defendants are joined in an action on contract, the plaintiff shall be at liberty to recover against such defendant or defendants as appear to be liable; and the other defendants shall be acquitted, with like provisions respecting set-off, and evidence as in the case of too many plaintiffs, and the defendants so acquitted shall be entitled to their costs.

Joinder of too many defendants.

100. Upon a plea in abatement of non-joinder of a co-contractor as defendant, the plaintiff may, without any order, amend his writ, serve the amended writ on the added defendant, and proceed against both; and the date of such amendment shall, as between such added defendant and the plaintiff, be considered the commencement of the suit.

Plea in abatement of non-joinder.

101. In such case, if upon the trial of the cause it shall appear that the added defendant was jointly liable, with the original defendant, the original defendant shall be entitled to the costs of the plea in abatement and amendment; but if at the trial it shall appear that the plaintiff cannot maintain his action against the original and added defendants, but can maintain his action against the original defendant alone, the added defendant shall be acquitted with costs, and the plaintiff shall be entitled to recover against the original defendant with costs, including those of the plea in abatement, and such costs as the plaintiff may have to pay the added defendant.

Costs.

#### DEATH AND MARRIAGE OF PARTIES.

102. The death of a plaintiff or defendant shall not cause the action to abate, but it may be continued in manner and under the restrictions hereinafter mentioned.

Death of party not to abate action.

103. If there be two or more plaintiffs or defendants and one or more of them shall die, if the cause of such action shall survive to the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, the action shall not be thereby abated; but such death being suggested upon the record, the action shall proceed at the suit of the surviving plaintiff or plaintiffs against the surviving defendant or defendants.

Death of one or several parties.

**CHAP. 94.** 104. In case of the death of a sole plaintiff, or sole surviving plaintiff, the legal representative of such plaintiff may at any time within two years after such death, by leave of the Court or a judge, enter a suggestion of the death, and that he is such legal representative, and the action shall thereupon proceed: and if such suggestion be made before the trial, the truth of the suggestion shall be tried thereat, together with the cause of action of the deceased plaintiff; and such judgment shall follow upon the verdict in favour of or against the person making the suggestion, as if such person were originally the plaintiff; and the defendant or person against whom the action may be so continued may apply by summons to compel the plaintiff, or person entitled to proceed with the action in the room of the plaintiff, to proceed according to the provisions of this Chapter, within such time as the judge shall order; and in default of such proceeding the defendant, or other person against whom the action may be so continued as aforesaid, shall be entitled to enter a suggestion of such default, and of the representative character of the person by or against whom the action may be proceeded with, as the case may be, and to have judgment for the costs of the action and suggestion against the plaintiff, or against the person entitled to proceed in his room, as the case may be, and in the latter case to be levied of the goods of the testator or intestate.

Of sole defendant.

105. In case of the death of a sole defendant or sole surviving defendant, where the action survives, the plaintiff may make a suggestion, either in any of the pleadings, if the cause has not arrived at issue, or in the issue, if it has so arrived, of the death, and that a person named therein is the executor or administrator of the deceased; and may thereupon serve such executor or administrator with a copy of such writ and suggestion, and with a notice signed by the plaintiff or his attorney, requiring such executor or administrator to appear and plead within twelve, eighteen, or twenty-four days, as the case may be, after service of the notice, and that in default of his so doing, the plaintiff may sign judgment against him as such executor or administrator; and the same proceedings may be had in case of non-appearance and plea, after such notice as upon a writ against such executor or administrator, in respect of the cause for which the action was brought. In case no pleadings have taken place before the death, the suggestion shall form part of the declaration, and the declaration and suggestion may be served together; and the new defendant shall plead thereto at the same time; and in case the plaintiff shall have served his declaration, but the defendant shall not have pleaded before the death,

he new defendant shall plead at the same time to the declaration and suggestion; and in case the defendant shall have pleaded before the death, the new defendant shall be at liberty to plead to the suggestion, only by way of denial, or such plea as may be appropriate and rendered necessary by his character of executor or administrator, unless, by leave of the Court or a judge, he should be permitted to plead fresh matter in answer to the declaration; and, in case the defendant shall have pleaded before the death, but the pleadings shall not have arrived at issue, the new defendant, besides pleading to the suggestion, shall continue the pleadings to issue in the same manner as the deceased might have done, and the pleadings upon the declaration and pleadings upon the suggestion shall be tried together; and in case the plaintiff shall recover, he shall be entitled to the like judgment, in respect to the debt or sum sought to be recovered, and in respect of the costs, prior to the suggestion, and in respect of the costs, of the suggestion and subsequent thereto, as in an action originally commenced against the executor or administrator.

106. The death of either party, between the verdict and the judgment, shall not hereafter be alleged for error, so as such judgment be entered within two terms after such verdict, or such other time as the Court may allow.

Death between  
verdict and  
judgment.

107. If the plaintiff in any action happen to die after an interlocutory judgment or verdict, and before a final judgment obtained therein, the action shall not abate by reason thereof, if such action might have been originally prosecuted or maintained by the executor or administrator of such plaintiff; and if the defendant die after such interlocutory judgment or verdict, and before final judgment obtained therein, the action shall not abate, if such action might be originally prosecuted or maintained against the executor or administrator of such defendant; and the plaintiff, or if he be dead after such interlocutory judgment, his executors or administrators, may have a writ of revivor against the defendant, if living, after such interlocutory judgment or verdict, or if he be dead, then against his executors or administrators, to shew cause why damages in such action should not be assessed and recovered by him, or them; and if such defendant, his executors or administrators, shall appear at the return of such writ, and not show or allege any matter sufficient to arrest final judgment, or shall make default, damages shall be thereupon assessed as hereinbefore provided; and upon the return of the writ or delivery of the order, with the amount endorsed thereon, final judgment shall be given for the plaintiff, his executors or administrators, prosecuting

Death of plain-  
tiff between in-  
terlocutory and  
final judgment.

**CHAP. 94.** such writ of revivor against such defendant, his executors or administrators, respectively.

Marriage of female plaintiff or defendant not to abate action.

108. The marriage of a woman, plaintiff or defendant, shall not cause the action to abate; but the action may, notwithstanding, be proceeded with to judgment, and such judgment may be executed against the wife alone, or, by suggestion or writ of revivor pursuant to this Chapter, judgment may be obtained against the husband and wife, and execution issue thereon; and in case of a judgment for the wife, execution may be issued thereupon by the authority of the husband, without any writ of revivor or suggestion; and if in any such action the wife shall sue or defend by attorney, appointed by her when sole, such attorney shall have authority to continue the action or defence, unless such authority be countermanded by the husband, and the attorney changed according to the practice of the Court.

OF SECURITY FOR COSTS.

Application for, when to be made.

109. An application to compel the plaintiff to give security for costs must in ordinary cases be made before issue joined; and the bail shall justify as in other cases.

How obtained.

110. Any Prothonotary, in the absence of the judge from the county, shall have power to grant orders for the stay of proceedings in a cause until security for costs be filed, upon sufficient grounds laid by affidavit in the same way as such orders are now granted by the Supreme Court or a judge; but any party dissatisfied with a Prothonotary's decision may, at any time within twelve days thereafter, apply to the Supreme Court, upon motion, or to a judge at chambers, by summons upon affidavit, for a re-hearing. A plea filed in the meantime or other proceeding taken on the part of the plaintiff or defendant, shall not prejudice the party claiming a re-hearing.

Effect of not giving security.

111. Where the plaintiff shall fail to give security for costs within twelve months after service upon him or his attorney of a rule or order therefor, he shall be deemed out of Court.

QUESTIONS RAISED BY CONSENT WITHOUT PLEADINGS.

Questions may be stated for trial without pleadings.

112. The parties, after writ issued, may, by leave of the Court or a judge, state any question for trial, which they may think fit, without any pleadings, and with or without an agreement, that according as it may be determined, as agreed sum of money, or a sum to be ascertained by the jury, shall be paid, and as to payment of costs.

Judgment thereon.

113. Upon such finding, judgment may be entered, and the proceedings recorded.

114. Questions of law, after writ issued, may be stated CHAP. 94.  
for the opinion of the Court without pleading, and with Questions of law, how stated.  
similar agreements as to money and costs to be recovered,  
and with or without an agreement to bring errors, which  
may be brought when agreed.

## PLEADING.

115. The defendant shall appear and plead within four Defendant's time for appearing and pleading.  
days after the time specified in the writ for his appearance.

116. Every declaration, whether in the body of the Technical or formal language not necessary in pleading.  
writ or annexed, and subsequent pleadings which shall  
clearly and distinctly state all such matters of fact as are  
necessary to sustain the action, defence, or reply, as the  
case may be, shall be sufficient; and it shall not be neces-  
sary that such matters should be stated in any technical or  
formal language or manner, or that any technical or formal  
statements should be used.

117. All statements which need not be proved, such as Immaterial statements to be omitted.  
the statement of time, quantity, quality and value, where  
these are immaterial, that of losing and finding, and bail-  
ment in actions for goods or their value; the statement of  
acts of trespass having been committed with force and  
arms, and against the peace of our Lady the Queen; the  
statement of promises which need not be proved, as pro-  
mises in indebitatus counts and mutual promises to perform  
agreements, and the like statements shall be omitted; and  
when any clearly unnecessary statement is made or any  
statement is made with unnecessary prolixity, as for in-  
stance, where evidence of the fact is pleaded instead of or  
as well as the matter of fact itself, or otherwise, it may be  
struck out or amended by the Court or a judge with or  
without costs.

118. In summary causes the defendant shall not be No plea required in summary causes.  
required to file or serve a written plea; but he shall file  
and serve a written notice of appearance, in which he  
shall state briefly the grounds of his defence; and, if he  
means to rely upon a set-off, he shall serve the plaintiff or  
his attorney with the particulars thereof.

119. No venue shall be changed without a special order Change of venue.  
of the Court or a judge, unless by the consent of the  
parties.

120. The name of the county in the writ shall in all No venue in body of writ.  
cases be taken to be the venue intended by the plaintiff;  
and no venue shall be stated in the body of the writ or  
declaration, or in any subsequent pleading: provided that  
in cases where local description is now required, such  
local description shall be given.

121. Either party may object by demurrer to the plead- Demurrer to pleadings.  
ings of the adverse party, on the ground that such plead-



**CHAP. 94.** ings do not set forth sufficient ground of action, defence or reply, as the case may be; and where issue is joined on demurrer, the Court shall proceed and give judgment according as the very right of the cause and matter in law shall appear unto them, without regarding any imperfection, omission, defect in, or lack of form; and no judgment shall be arrested, stayed, or reversed for any such imperfection, omission, defect in, or lack of form.

May demur and plead, by leave.

122. Either party may, by leave of the Court or a judge, upon sufficient cause, and supported by affidavit, plead and demur to the same pleading at the same time; and it shall be in the discretion of the Court or a judge which issue shall be first disposed of.

Defects in form, &c.

123. Except in the cases hereinafter particularly mentioned, no pleading shall be deemed insufficient for any defect now objectionable on special demurrer only.

Duplicity, argumentativeness, and uncertainty.

124. Duplicity, argumentativeness, and uncertainty, shall be no longer grounds of objection to a pleading, unless the effect of such duplicity, argumentativeness, or uncertainty shall be to embarrass the opposite party: but if any pleading, by reason of duplicity, argumentativeness, or uncertainty, shall be so framed as to embarrass or mislead the opposite party, it shall be competent to the latter to apply to a judge to have such pleading amended; which application shall be by summons, wherein the party shall state the particular ground of objection, and require that the pleading be amended.

Pleading, how amended.

125. Upon the hearing of such summons, if the judge shall be of opinion that the objection is well founded, and that the pleading is, in the matter objected to, so pleaded as to embarrass or mislead the opposite party, he may order the party pleading to amend in such manner as he may direct upon the payment of costs; and in the event of such amendment not being made within a limited time, the party complaining shall be at liberty to demur; but if the judge shall not be of such opinion, he shall dismiss the summons with costs; and the party complaining shall have no further right of objection as to the point mentioned in the summons, or as to any other point of duplicity, argumentativeness, or uncertainty.

Court may exercise judge's powers.

126. The powers conferred upon a judge under the two last sections, may be exercised by the Court.

Demurrer pleaded by leave.

127. A demurrer on any such ground shall state that it is pleaded by leave, and shall repeat the objection taken in the summons, and that only.

Judgment on demurrer.

128. Upon the argument of such demurrer the Court shall give judgment according to the validity or invalidity of the specified objection and the substance of the pleading.

9. The form of a demurrer shall be as follows:— CHAP. 94.

The plaintiff [*or defendant*] by ——— his attorney, Form of demurrer.  
*or person*] says that the declaration [*or plea, &c.*] is in substance, for the following reasons, viz.:

10. The form of a joinder in demurrer in all cases shall Form of joinder.  
 follow:

The plaintiff [*or defendant*] says that the declaration [*or &c.*] is good in substance.

1. In every demurrer some matter of law intended Matter of law to be stated.  
 argued shall be stated; and if any demurrer shall be argued without such statement, or with a frivolous argument, it may be set aside as irregular by the Court or judge, and leave may be given to sign judgment as for a plea; but the party demurring may, at the time of argument, insist upon any further matters of law, which have been added to the demurrer by a judge's order.

2. No rule for joinder in demurrer shall be required; Joinder may be demanded.  
 the party demurring may demand a joinder in demurrer, and the opposite party shall be bound, within ten days after such demand, to deliver the same, otherwise demurrer.

3. The Court or a judge shall, in all cases, have power False, frivolous, or vexatious pleadings set aside.  
 to set aside, in whole or in part, false, frivolous or vexatious pleadings, and pleadings colorably amended in order to obtain compliance with a judge's order to amend.

4. The forms contained in Schedule B shall be sufficient; Forms.  
 and those and the like forms may be used, with such modifications as may be necessary to meet the facts of the case: but nothing herein contained shall render them void or irregular to depart from the letter of such forms, so long as the substance is expressed without pro-

5. In all actions upon bills of exchange and promissory Pleas in actions on bills of exchange, &c.  
 notes, pleas that the defendant "never was indebted," "did not promise as alleged," shall be inadmissible. In all such actions, therefore, a plea in denial must traverse some particular of fact: for example, the drawing, or making, or signing, or accepting, or presenting, or notice of dishonor of the bill or note.

6. In every species of actions on contracts, all matters Pleas on contracts.  
 of confession and avoidance, including not only those of discharge, but those which show the transaction to be either void or voidable in point of law on the ground of infancy, coverture, release, payment, performance, want of consideration, either by statute or by common law, shall be specially pleaded: for example, infancy, coverture, release, payment, performance, want of consideration, either by statute or by common law, drawing, endorsing, accepting, &c., bill or note by

**CHAP. 94.** way of accommodation, set-off, mutual credit, unseaworthiness, misrepresentations, concealment, deviation, and various other defences, must be pleaded.

On policies of insurance.

137. In actions on policies of insurance, the interest of the insured may be averred thus: "That A., B., C. and D. [or some or one of them] were or was interested," &c.; and it may be also averred, "that the insurance was made for the use and benefit and on the account of the person or persons so interested."

On specialties and covenants,

138. In actions on specialties and covenants, the defendant's plea that the alleged deed is not his deed shall operate as a denial of the execution of the deed in point of fact only; and all other defences shall be specially pleaded, including matters which make the deed absolutely void as well as those which make it voidable.

"*Nil debet*" not allowed.

139. The plea of "*nil debet*" shall not be allowed in any action.

Matters in confession, &c.

140. All matters in confession and avoidance shall be pleaded specially as above directed in actions on simple contracts.

Fraud must be pleaded.

141. Where a defendant intends to set up fraud as a defence to the declaration, or a plaintiff to rely upon fraud in answer to the plea of the defendant, it must be pleaded; but fraud may be proved without plea, in answer to any matter of evidence not upon the record.

Replication.

142. In all cases the plaintiff may reply without the leave of the Court or a judge; and where the plaintiff shall not reply before trial, or within thirty days after the service of the pleas, he shall be taken to have denied the facts alleged therein; but the Court or a judge may give leave to apply after the expiration of the thirty days.

Payment.

143. Payment shall not in any case be allowed to be given in evidence in reduction of damages or debt, unless the same shall be pleaded in bar.

Actions for wrongs.

144. In actions for wrongs independent of contract a plea that the defendant *did not do* what is complained of by the plaintiff, shall operate as a denial only of the breach of duty, or wrongful act, alleged to have been committed by the defendant, and not of the facts stated in the inducement; and no other defence than such denial shall be admissible under that plea. All other pleas in denial shall take issue on some particular matter of fact alleged in the writ or declaration; and all matters in confession or avoidance shall be pleaded specially as in actions on contract.

Trespass to land.

145. In actions for trespass to land, a plea that the defendant did not commit the trespass complained of shall operate as a denial that the defendant committed the trespass alleged in the place mentioned, but not as a denial of the plaintiff's possession or right of possession of that place,

which, if intended to be denied, must be traversed specially. CHAP. 94.

146. In actions for taking, damaging, or converting the plaintiff's goods, a plea denying the defendant's having committed the wrong alleged by taking, damaging, or converting the goods mentioned, shall not operate as a denial of the plaintiff's property therein, which, if intended to be denied, must be traversed specially. Taking goods, &c.

147. Express color, profert, oyer and special traverses, are abolished. Express color, &c., abolished.

148. Each party shall be entitled to demand of the other a copy or inspection, or both copy and inspection, in whole or in part, of any deed, agreement, bill, or other written document, mentioned or referred to in his pleading, or in any paper therein referred to, or whereof inspection could be obtained by a bill of discovery; and in the event of such copy not being delivered, or such inspection not being granted, shall be entitled to apply to the Court or a judge for an order for such copy or inspection, or both, as the Court or a judge may think fit. Inspection of deeds, &c., may be demanded.

149. Such demand, summons, or order, shall be no stay of proceedings, unless specially ordered; and the Court or a judge may impose such conditions for enforcing obedience thereto as may be deemed right. Such demand no stay of proceedings.

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

151. A plaintiff or defendant may aver performance of conditions precedent generally; and the opposite party shall not deny such averment generally, but shall specify the condition or conditions precedent the performance of which he intends to contest. Averment of performance, and denial.

152. The general issue, and all general pleas, are abolished, and every pleading shall specify, particularly and concisely, the facts intended to be denied. General issue abolished.

153. The rule to plead, and the demand of plea are abolished, and the notice to plead, which may be endorsed on the writ, or declaration, or delivered separately, shall be alone retained. Rule to plead and demand of plea abolished.

154. With any amended declaration, plea, or subsequent pleading, delivered in any cause in Term or vacation, a notice to the following effect may be endorsed: "Ten days are given to the plaintiff (or defendant) to plead, [reply], &c., in the cause"; and thereupon, if the party thus notified shall neglect to file his plea, replication, rejoinder, or other pleading, as the case may be, within ten days from Notice to plead, &c.

**CHAP. 94.** the time of service of such notice, and to deliver a copy of the same to the opposite attorney, the party giving such notice shall, after the expiration of that time, be at liberty, being plaintiff in the cause, to mark a default as for want of plea; or, being defendant, to sign judgment of *non pros*: provided, however, that the Court or a judge may, upon application, grant further time to plead; and may also, upon proper cause alleged and verified, order such default, or *non pros*, to be set aside, upon such terms as shall be thought reasonable and just; and provided also, that the Court or any judge thereof may, in such cases as require it, give a rule or order to plead, reply, &c., within any shorter period than ten days.

Several counts for same cause of action.

155. Two or more counts may be added for the same cause of action, and several pleas, replications and subsequent pleadings may be pleaded; but no costs shall be allowed for any count or other pleading which may appear to the judge unnecessary. The costs of all issues shall be borne by the party against whom they are found; and the jury shall be required to find the truth on each issue.

Costs, how borne.

Entry of continuance, &c., abolished.

156. No entry of continuance, by way of imparlance, *curia advisari vult*, *vice-comes non misit breve*, or otherwise, shall be made upon any record or roll whatever, or in the pleadings; but in all cases in which a plea *puis darrein continuance* is now by law pleadable, the same defence may be pleaded with an allegation that the matter arose after the last pleading, or the issuing of the jury process, as the case may be.

Defence arising after last pleading.

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

Property description of in ejectment, &c.

158. In ejectment and in trespass *quare clausum fregit*, the property shall be described by metes and bounds, or other certain designation.

Particulars may be demanded in actions of trespass.

159. In any action for trespass to a person or property, the defendant shall be entitled to particulars, identifying the cause of action for which the plaintiff is proceeding, and the plaintiff to particulars of any justification pleaded by the defendant; and the judge may order plans of the place in question to be exchanged between the parties.

No new assignment.

160. No new assignment shall be pleaded, unless by leave of the Court or a judge.

Plea to new assignment.

161. No plea which has already been pleaded to the declaration, shall be pleaded to a new assignment, **except** a plea in denial, unless by leave of the Court or a judge; and such leave shall only be granted upon **satisfactory**

proof that the repetition of such plea is essential to a trial **CHAP. 94.**  
on the merits.

162. It shall be lawful for a plaintiff in replevin, or for the defendant in any cause in the Supreme Court in which, if judgment were obtained, he would have been entitled to relief against such judgment on equitable grounds, to plead the facts which entitle him to such relief by way of defence; and the Court shall receive such defence by way of plea; provided that such plea shall begin with the words, "for defence on equitable grounds," or words to the like effect.

Equitable pleas may be pleaded in certain cases.

163. The plaintiff may reply, by leave of the Court or a judge, in answer to any plea of the defendant, facts which avoid such plea upon equitable grounds; provided that such replication shall begin with the words, "for replication on equitable grounds," or words to the like effect.

Replication to plea on equitable grounds.

164. When such plea or replication on equitable grounds is put in, the particulars of demand and set-off may be obtained as in other cases.

Particulars may be obtained.

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

Libel and slander, averments in.

166. In actions of slander the precise words need not be proved as stated; provided the defamatory matter itself shall be substantially proved: nor shall it be necessary to aver, or prove special damage, where it shall appear that the words were defamatory, and were spoken falsely and maliciously.

Precise words in slander need not be proved.

167. In all personal actions, except actions for malicious arrest or prosecution, criminal conversation, or debauching the plaintiff's daughter or servant, the defendant, or the plaintiff in replevin in cases where an avowry is pleaded, may pay into Court a sum of money, by way of compensation or amends, without any rule or judge's order for that purpose, except in the case of one or more of several defendants, when such leave must be obtained and may be granted on such terms as the Court or a judge may think fit.

Compensation or amends in certain personal actions.

168. When money is paid into Court, such payment shall be pleaded in all cases, and in any stage of the cause, as nearly as may be in the following form:

Payment into court must be pleaded.

The defendant, by ———, his attorney, [*or in person*],

Form of plea.

**CHAP. 94.** [*if pleaded as to part, say as to \$—, parcel of the money claimed*], brings into Court the sum of \$—, and says that the said sum is enough to satisfy the claim of the plaintiff in respect of the matter herein pleaded to.

How paid in and out.

169. When money is paid into Court the same shall be paid to the proper officer, who shall give a receipt for the amount in the margin of the plea; and the same shall be paid out to the plaintiff or his attorney on demand.

Replication to plea of payment into court.

170. The plaintiff, after delivery of a plea of payment of money into Court, shall be at liberty to reply to the same by accepting the sum so paid into Court, in full satisfaction and discharge of the cause of action in respect of which it has been paid in; and he shall be at liberty in that case to tax his costs of suit; and in case of non-payment thereof, within twenty-four hours, to sign judgment for his costs of suit so taxed: or the plaintiff may reply that the sum paid into Court is not enough to satisfy the claim of the plaintiff in respect of the matter to which the plea is pleaded; and, in the event of an issue thereon being found for the defendant, the defendant shall be entitled to his judgment and costs; and if the plaintiff shall not, within thirty days after service of plea, reply that the sum is not sufficient, he shall be held to have accepted payment in full satisfaction of the plaintiff's claim.

Time to plead, how obtained.

171. No rule or order for further time to plead shall be granted, unless the grounds of such application be disclosed by affidavit; and it shall then rest with the Court or a judge, in their discretion, to grant such rule under the special circumstances of each particular case; but the Prothonotary in any county upon affidavit that the defendant has a good defence upon the merits, and that time is required to put in pleas, and that the application is not merely for delay, may grant an order for further time to plead not exceeding ten days, and not to extend beyond the first day of the term or sittings for which notice of trial may have been given.

Pleadings must be filed and served.

172. It shall be imperative on the party, plaintiff or defendant, to deliver to the opposite party, or his attorney, as well as to file all pleadings within the time limited therefor.

Counsel's signature unnecessary.

173. It shall not be necessary to have a counsel's signature to any pleading, but all pleadings shall be signed with the name of the party or his attorney.

Plea not to be waived without leave.

174. The defendant shall not be at liberty to waive his plea, without leave of the Court or a judge, and on such reasonable terms as they shall approve.

Mutual debts may be set off.

175. Wherever there are mutual debts in the same right, one debt may be set off against the other, although such debts may be deemed in law of a different nature, and

where a set-off greater than the plaintiff's claim has been proved, judgment for the excess shall be given for the defendant. CHAP. 94.

176. In a plea or subsequent pleading, intended to be pleaded in bar to the whole action generally, it shall not be necessary to use any allegation of *actionem non*, or to the like effect, or any prayer of judgment, nor shall it be necessary, in any replication or subsequent pleading intended to be pleaded in maintenance of the whole action, to use any allegation of *precludi non*, or to the like effect, or any prayer of judgment; and all pleas, replications, and subsequent pleadings, pleaded without such formal parts, shall be taken, unless otherwise expressed, as pleaded respectively in bar or in maintenance of the whole action: provided that nothing herein contained shall extend to cases where an estoppel is pleaded. Pleas in bar, &c., formal parts abolished.  
Proviso.

177. No formal defence shall be required in a plea, and it shall commence as follows: The defendant, by ———, his attorney. [*or in person,*] says that — —. Formal defence unnecessary.

178. It shall not be necessary to state in a second or other plea, or avowry, or cognizance, that it is pleaded by leave of the Court, or according to the form of the statute, or to that effect; nor shall such leave be required. Leave not to be pleaded in subsequent pleas.

179. Where there are two or more counts substantially for the same cause of action, or two or more pleas raising substantially the same defence to the same cause of action, the defendant or plaintiff may, on suggesting the fact in his plea or replication, plead a single plea or replication to such counts or pleas; and, when the opposite party insists that the cause of action or defence is not the same, he may apply to the Court or a judge, who may set aside the plea or replication on such terms or make such other order as shall appear to be right or just. One plea or replication to several counts allowable.

180. In all actions by and against the assignees of a bankrupt or insolvent, or executors or administrators, or persons authorized by Act of Parliament to sue or be sued as nominal parties, the character in which the plaintiff or defendant is stated on the record to sue or be sued, shall not in any case be considered as in issue, unless specially denied. Character of parties to certain suits not to be in issue.

181. The plaintiff may discontinue at any time by filing either a discontinuance or a rule therefor; and thereupon the defendant may at once tax his costs of defence and enter judgment therefor. Discontinuance.

182. Different causes of action, of whatever kind, except local causes arising in different counties, may be joined in the same suit; provided they be by and against the same parties and in the same rights: but the Court or a judge shall have power to prevent the trial of different Different causes of action may be joined.



**CRAP. 94.** causes of action together, if such trial would, in their judgment, be inexpedient, and in such case may order separate issues to be made up and separate trials to be had; but nothing herein contained shall restrict or diminish the obligation, or right of a plaintiff to include in one action all or any of the drawers, makers, endorsers and acceptors of any bill of exchange or promissory note.

Action brought by man and wife.

183. In any action brought by a man and his wife on any cause of action *ex contractu* or *ex delicto* accruing personally to the wife, in respect of which they are necessarily co-plaintiffs, the husband may add thereto claims in his own right, and the damages may be set out as to the husband alone; and separate actions brought in respect of such claims may be consolidated, if the Court or a judge think fit; but in case of the death of either plaintiff, such suit shall abate so far only as relates to the causes of action, if any, which do not survive.

Special damage need not be proved in certain actions.

184. In any action for slanderous words spoken of an 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.

#### NOTICES.

Notice of trial in cases of non-residents.

185. Where a party who has brought an action or been served with process within the jurisdiction resides out of the Province, notices of trial shall be served at least twenty days before the first day of the Term or the Sittings thereafter.

What length of notice of trial sufficient.

186. A notice of trial endorsed on a writ of summons shall be sufficient, if served the same number of days required for the defendant's appearance in the Term or Sittings mentioned in such notice; and in continued cases, where the defendant resides within the county (except in the Island of Cape Breton) in which the action is brought, the notice shall be served at least twenty days; if in any other county, at least thirty days; and if the defendant resides in Cape Breton and the action is brought in any county not in the Island, or if the defendant resides out of Cape Breton and the action is brought within any county in the Island, at least forty days before the first day of the Term or the Sittings thereafter; and if the plaintiff shall not proceed to trial pursuant to such notice, he shall be liable to pay to the defendant the costs of not proceeding to trial, unless he can shew good cause to the contrary, or shall have given to the defendant, or his attorney in case he has appeared, notice of countermand of such trial at

least four days; or in case the defendant resides in Cape Breton and the action is brought in any county not in the Island, or the action is brought in any county within the Island and the defendant resides out of the Island, at least fourteen days, before the first day of the Term or the Sittings thereafter; but the plaintiff shall, notwithstanding such countermand, pay all the costs which the defendant has actually been put to prior to such notice of countermand, in consequence of the notice of trial. CHAP. 94.

187. All notices given in the progress of or preparatory to a cause, between the attorneys, shall be received in evidence on affidavits of the service thereof made by the attorneys or their clerks, specifying the times and mode of such service. Notices, how to be received in evidence.

## SCIRE FACIAS.

188. During the lives of the parties to a judgment, or those of them during whose lives execution might formerly issue within a year and a day without a *scire facias*, execution may issue without a revival of the judgment, at any time within six years after the judgment. Execution may issue within six years.

189. In cases where it become necessary, by reason either of the lapse of time, or of a change by death, or otherwise, of the party entitled or liable to execution, the party alleging himself entitled to execution shall be allowed either to sue out a writ in the nature of a *scire facias*, to be called a writ of revivor, according to the form set forth in Schedule A, number 13, or to apply to the Court or a judge for leave to enter a suggestion to the effect that it manifestly appears to the Court, that he is entitled to execution of the judgment, and to issue execution thereupon; such leave to be granted by the Court or a judge, upon a rule to shew cause, or a summons to be served as at present, or in such other manner as may be directed by such Court or a judge, which rule or summons may be in the form given in Schedule A, number 14; and upon such application, in case it manifestly appears that the party making the same is entitled to execution, the Court or a judge shall allow such suggestion to be entered in the form given in Schedule A, number 15, and execution to issue, and order whether or not the costs of the application shall be paid by the applicant; and in case it does not manifestly so appear, shall discharge the rule or dismiss the summons with or without costs, and the party applying shall, in such case, nevertheless, be at liberty to proceed by revivor, or action upon the judgment. Judgment, how revived.

190. In cases where a party shall be desirous of reviving a judgment under the last section, and the defendant shall not be within the Province, instead of the personal Writ of revivor.  
Suggestion.  
Revival of judgment when defendant out of province.

**CHAP. 94.** service of the writ of revivor, or of the rule of summons to shew cause why execution should not issue, it shall be in the power of the Supreme Court or a judge, on sufficient cause shewn to the satisfaction of such Court or judge to order publication or constructive service of the writ or rule to be made in such manner; and for such time, as the Court or judge shall think proper; and such publication or constructive service shall have the same effect as a personal service on the defendant.

## AMENDMENT.

Court or judge may amend defects, &c.

191. The Supreme Court, and every judge thereof, shall at all times have the power of amending all defects and errors in any proceedings in civil causes, whether there be anything in writing to amend by or not, and whether the defect or error be that of the party or not; and all such amendments may be made with or without costs, and upon such terms as to the Court or a judge shall seem fit; and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties, shall be made.

Party dissatisfied with amendment.

192. The party against whom such amendment shall be made, if dissatisfied therewith, may apply to the Court for a new trial on that ground; and the Court shall thereupon make such order as to a new trial, and the terms on which such new trial shall be granted, or such other orders as they may deem reasonable.

Amendment at trial, power of judge.

193. In all such cases the judge, instead of causing the writ, pleadings, issue roll, or document to be amended, may direct the jury to find the facts according to the evidence; and such finding shall be stated on the writ, issue roll, or document; and if the judge shall deem such defect or error immaterial to the merits of the case, and the misstatements such as could not have prejudiced the opposite party, he shall give judgment according to the justice of the case.

## BAIL.

Bail to sheriff to be bail to action.

194. Bail to the Sheriff shall continue bail to the action, and shall have the power of rendering the defendant, whenever they shall see fit to do so,—the bail bond to be in the form in Schedule A, number 26.

Form of bond.

Special bail not necessary where bail to sheriff justify.

195. A party who has given bail to the Sheriff, which bail has justified when required to do so, may appear and defend the action without filing special bail.

Bail to sheriff, when to justify.

196. The bail to the Sheriff may be called upon to justify, on the return of the writ; 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 upon payment of all costs which may have been incurred by the plaintiff in consequence of such bail being insufficient. CHAP. 94.

197. The Sheriff shall return the bail bond with the *capias* to the Court where the writ is returnable, with an assignment thereon to the plaintiff, which assignment may be made by the Sheriff endorsing 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. Bail bond to be returned with writ.

198. 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. Bail, when allowed to render, in action upon bail bond.

199. When the bail live above 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. Bail, living at distance, may justify before judge, &c.

#### THE DOCKET.

200. The list of all summary and jury causes for trial must be given to the Prothonotary on or before the Tuesday preceding the first day of the Sittings or Term at which such causes are to be tried. List of causes, when to be given in.

201. In making up the docket of civil causes for trial, the Prothonotary shall be guided by the following rules:— Rules for making up docket for trial.

1st. All summary and appeal causes shall have precedence, except when ordered to be tried by a jury; and then they shall be entered on the docket according to seniority as declaration causes; such seniority in appeal causes to bear relation to the issuing of the original writs.

2nd. The seniority of all other causes shall be determined by the date of the issue of the respective writs.

3rd. All causes given in, that shall have been called on the list of the next preceding Term or Sittings, and the trial of which shall have been deferred without the fault of the plaintiff, or which were not tried for want of time, shall be placed on the docket or judge's list in the relative order in which they stood on the docket or list of such preceding Term or Sittings.

202. The docket of new as well as continued jury causes for trial shall be called on the first day of each Docket, when to be called.

**CHAP. 94.** **Sittings at Halifax or Term on Circuit, at or shortly after the opening of the Court; and the plaintiff's attorney or counsel, when a cause is so called, shall be required to state whether he intends to try the same at such Sittings; and in default of such statement the cause shall be struck off the docket, and stand continued; and the attorney or counsel of the defendant shall in like manner be required to state whether he intends defending the same; and in default of such statement the cause shall be struck off the docket, and judgment, whether interlocutory or otherwise, may be entered up for the plaintiff, and further proceedings had as if no plea had been filed; but the Court or a Judge, upon due cause shown, and upon such terms as may be thought proper, may order any cause to be again placed on the docket for trial as if it had not been called.**

Statements to be made, relative to trial and defence of causes.

Docket to be called once.

203. The docket of causes for trial shall be called but once, both at the Sittings in Halifax and on the Circuit.

*Charge on Entry on Docket.*

Fees of Prothonotary on entry of causes, &c., at Halifax.

204. There shall be paid to the Prothonotary at Halifax the sum of one dollar on the first entry of all declaration causes given in to him for trial at the sittings, and fifty cents on the first entry of all causes given in to him for argument at the term; and the same shall be taxed to and allowed the plaintiff, in his bill of costs, and, in the case of causes entered for argument, to the party entering the cause, should the plaintiff, and the party entering the cause for argument respectively succeed, and be entitled to the costs of the trial or of the argument. The Prothonotary shall not enter on the docket of causes for trial or argument any cause on which the sum of one dollar or fifty cents, as the case may be for such entry, shall not have been paid him.

To be paid to the barristers society.

205. The Prothonotary shall on the day following the giving in of such causes respectively pay over to the Treasurer of the Nova Scotia Barristers' Society, on his receipt, the amount received by him for such entries.

For the use of the law library.

206. The amount so paid in to the Treasurer shall be appropriated to the use of the law library under the direction of the officers for the time being of the Society.

OF THE TRIAL; AND NEW TRIALS.

Absence of material witness.

207. 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 has a just defence upon the

merits of the case, and that the application is not made solely for delay, but to enable the applicant to substantiate his defence. CHAP. 94.

208. The Court will hear one counsel only on each side, upon any motion arising during the trial of a cause, and if cases be cited in opposition to such motion one counsel will be heard in reply. One counsel on each side heard on motion arising during trial.

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

210. It shall be lawful for the presiding judge at the trial of any cause, where he may deem it right for the purposes of justice, to order an adjournment for such time during the same Term or Sittings, or to the next Term or Sittings, and subject to such rules and conditions, as to costs or otherwise, as he may think fit. Judge may adjourn trial.

211. No new trial shall be granted on account of evidence having been improperly received on any trial, if, in the judgment of the Court there be other evidence sufficient to sustain the verdict. No new trial if evidence sufficient.

212. When the judge shall refuse to grant a rule *nisi* for a new trial, in a cause tried before him, and the counsel for the party shall, on or before the last day of the Term, or the Sittings after Term, in which the cause has been tried, or such extended time thereafter as the judge who tried the cause shall in his discretion allow, file sufficient bail in such reasonable amount as the judge shall direct, to respond the judgment to be finally given in the cause, no judgment shall be entered up; but a rule *nisi* specifying the objections, shall pass, under which the party shall be at liberty to enter the cause, and it shall stand for argument in the same manner as if the rule *nisi* had been granted by the judge presiding at the trial. Rule for new trial under statute.

213. The parties to any cause now triable by jury may, by consent, in open Court, or writing signed by them or their attorneys or counsel, as the case may be, and at any time before trial, leave the decision of any issue of fact to the presiding judge; provided that the Court, upon motion, or the presiding judge shall, in their or his discretion, think fit to allow such trial; and such issue of fact may thereupon be tried and determined, and damages assessed, where necessary, in open Court, in Term, or the Sittings. Issue of fact may be left to decision of presiding judge.

**CHAP. 94.** after the Term, or in Halifax at Chambers, by the presiding judge, whose decision shall be of the same effect as the verdict of a jury; and the proceedings upon and after such trial, as to the power of the Court or judge, the moving for a new trial, the evidence and otherwise, shall be the same as in the case of trial by jury; save that it shall not be questioned upon the ground of being against the weight of evidence.

*Inspection.*

Rule or order for inspection of property how obtained.

214. Either party shall be at liberty to apply to the Court or a judge for a rule or order for the inspection, by the whole jury or by the judge before whom the cause is to be tried, or by the party himself or by his witnesses, of any real or personal property, the inspection of which may be material to the proper determination of the question in dispute; and it shall be lawful for the Court or a judge, if they shall think fit, to make such rule or order upon such terms as to costs and otherwise as such Court or judge shall direct.

OF ARGUMENTS, ETC.

Entry of causes for argument.

215. All causes for argument, whether upon demurrer, special verdicts, cases made, or rules *nisi* which have been granted, or causes in which the party has given bail to respond judgment as hereinbefore provided, must be entered with the Prothonotary at Halifax on or before the Tuesday preceding the first day of the Term; and such entry shall be deemed notice to the opposite party to be prepared for the argument; and in case of such entry being omitted from neglect or other cause, judgment shall be entered against the party who ought to have made such entry, unless the Court shall otherwise order.

Rules *nisi* to set aside verdicts.

216. In all cases where rules *nisi* have been granted to set aside verdicts, or which may otherwise delay judgment, the party who has obtained the rule shall enter the cause for argument on the Tuesday preceding the Term.

Entry of rule *nisi* by other party.

217. The party against whom any rule *nisi* has been granted may enter the cause with the Prothonotary; and in such case the cause shall be placed on the list prepared by the Prothonotary for the Court in the order in which it first presents itself under the rule, and shall not be entered a second time.

Papers when to be filed.

218. The demurrer book, special verdict, case, judge's report, affidavits, or other papers upon which rules *nisi* have been granted, must be on file on the Tuesday before the first day of Term at Halifax.

Rule *nisi* for new trial when to be argued.

219. No rule *nisi* for a new trial shall be argued at the commencement of the Term at Halifax unless the judge's

report of the facts proved or the points reserved shall have been filed on the Tuesday preceding the Term, which either party requiring the same shall apply to for the judge; and the judge shall deliver his report to the Prothonotary, who shall furnish copies thereof to the parties requiring the same; and the argument shall be confined to the facts therein stated; but it shall be competent for either party, on notice to the adverse party, to apply to the judge to alter or amend his report by his original notes, or otherwise by the consent of the parties or on affidavit.

CHAP. 94.

220. When rules *nisi* are moved for on the first day of the Term at Halifax, the Court, on sufficient grounds laid, may grant the same without hearing the other side.

Rule *nisi* may be granted on first day of term.

221. On the first day of Term at Halifax, the Court shall pronounce judgment, if prepared so to do, upon such cases as have been fully argued, after which they shall hear motions which do not require to be entered for argument, in the order in which motions are now heard, beginning with the Attorney General and proceeding through the bar according to priority.

Business of term at Halifax.

222. The motions and other necessary business of the first day of Term at Halifax having been disposed of, the remainder of that day and the subsequent days of the Term shall be devoted to hearing arguments upon the cases duly entered with the Prothonotary, in the following order: the first case upon the Attorney-General's list; and so on through the whole bar, according to priority: after the first case upon the junior barrister's list has been heard, then the second case upon the Attorney-General's list, and so on until all the causes entered for argument have been heard: but causes entered for argument and continued over the Term shall in subsequent terms retain the places they originally occupied on the docket, and take priority of new causes. No *concilium* shall be moved for upon demurrers, which will take their turn with other causes entered for argument.

Priority of counsel regulated.

223. The party who has obtained the rule *nisi* shall briefly bring under the notice of the Court the grounds upon which the rule was granted. The opposite party shall then shew cause, and the party supporting the rule shall reply, unless the Court specially direct a different course; and the right of counsel to be heard on the argument of demurrers or cases, shall be the same as in ordinary arguments.

Argument, how to be conducted.

224. The attorneys in the several causes for argument must provide each of the judges with copies of all papers necessary to be perused by them before the argument begins.

Copies of reports to be furnished to judges.

225. A case entered into by real parties, plaintiffs and defendants, and signed by counsel, may be filed, entered,

Case may be argued without issue of writ.



**CHAP. 94.** and argued, without any writ having issued, and judgment may be entered and execution issued thereon, as if the suit had been instituted in the usual way.

Judgment may be pronounced at chambers.

226. When cases have been fully argued, and the several judges who heard the argument have decided upon the judgment to be delivered, and have reduced their opinions to writing, the judgment of the Court may be pronounced by a judge at chambers, after the several opinions have been read.

OF VERDICTS, JUDGMENTS, ETC.

Warrants, &c., when to be filed.

227. Every warrant of attorney to confess judgment in any personal action, and every cognovit actionem in any such action, and every defeasance or condition to which such warrant or cognovit may be subject, shall within thirty days from the date of such warrant or cognovit respectively, be filed in the office of the prothonotary of the county wherein the person giving such warrant or cognovit resides; and unless such warrant or cognovit, together with the defeasance or condition to which the same may be subject, shall be so filed, such warrant or cognovit shall be null and void to all intents and purposes whatsoever. Provided that every defeasance or condition above referred to shall be written on the same paper on which the warrant or cognovit is written, and in default thereof such defeasance or condition shall be void.

Provision for warrants in certain cases.

228. No warrant of attorney nor cognovit nor any judgment heretofore entered up thereon shall be held inoperative or void by reason only that such warrant or cognovit shall not have been filed in the office of the prothonotary of the county wherein the person giving such warrant or cognovit, resided at the date of the same; provided such judgment shall have been otherwise duly entered up within ten days after the date of such warrant; and such judgment shall form a good and valid lien upon the real estate of the party executing such warrant or cognovit: provided such judgment shall have been duly registered in the office of the Registrar of Deeds for the county or district wherein the real estate is situate.

Provision for judgments since 1st Sept. 1851.

229. Judgments entered in the book of country judgments, since the first day of September, 1851, and the transcripts thereof entered in the county judgment books, and all other proceedings had under such judgments, shall have the same effect as if section 19 of Chapter 89 "Of the Supreme Court and its Officers," had been in force when such judgments had been entered, and as if the same had been entered, and such other proceedings been had thereunder.

230. In case hereafter of a verdict or an award under an order of Court for a sum of money, in favor of a plaintiff or defendant, where final judgment is delayed by a rule nisi or other proceeding on the part of the opposite party, and judgment shall be ultimately given for the party recovering the verdict or in whose favor the award is, such judgment shall be entered on the verdict or award with interest, unless the Court or a judge shall otherwise order.

CHAP. 94.

Interest allowed on verdicts and awards in certain cases.

231. Upon all debts or sums certain, the jury, or the Court or a judge where there is no jury, or an arbitrator under a rule of Court, may allow interest to the creditor, at a rate not exceeding legal interest, from the time the debt or sum became payable, if payable at a certain time, under a written instrument; or if payable otherwise, then from the time of a demand of payment in writing, containing a notice that interest will be claimed from the date of the demand until payment shall have been made.

Interest may be allowed by jury, judge or arbitrator.

232. The jury or the Court, or the Judge where there is no jury, or an arbitrator under rule of Court, may give damages in the nature of interest over and above the value of the goods at the time of the conversion or seizure, and over and above the money recoverable in any action on policies of insurance.

Damages in nature of interest may be allowed.

233. Whenever it shall appear that the plaintiff had an opportunity in a prior suit of setting off his claim, and shall not give a satisfactory reason for not having done so; he shall not be entitled to recover any costs, and it shall be in the discretion of the Court to grant the defendant his costs against the plaintiff.

When prior opportunity to set off, no costs.

234. Judgment may be ordered, as in case of a non-suit, for not duly proceeding to trial, and notice therefor may be given, notwithstanding a previous trial, or trials of the cause may have taken place.

Judgment as in case of non-suit.

235. Final judgment may be signed by any judge, and the judge shall set down the date upon the docket; and the Prothonotary shall mark on the record the day it was filed, but no marginal note shall be required thereon.

Final judgment, how signed, &amp;c.

236. No judgment shall have relation to any other day than the day on which it is signed.

Date of judgment.

## MISCELLANEOUS.

237. Appeals from the Court of Probate shall be made directly to the Supreme Court.

Appeals from probate court.

238. In all actions and suits in the Supreme Court for breach of contract to deliver specific goods for a price in money, or in actions of replevin, on the application of the plaintiff, and by leave of the judge before whom the cause is tried, the jury shall, if they find the plaintiff entitled to

Finding of jury, in actions for breach of contract to deliver goods, and replevin.

**CHAP. 94.** recover, find by their verdict what are the goods, in respect of the non-delivery of which the plaintiff is entitled to recover, and which remain undelivered; what (if any) is the sum the plaintiff would have been liable to pay for the delivery thereof; what damages (if any) the plaintiff would have sustained if the goods should be delivered under execution as hereinafter mentioned; and what damages if not so delivered. And, thereupon, if judgment shall be given for the plaintiff, the Court or any judge thereof, at their or his discretion, on the application of the plaintiff, shall have power to order execution to issue for the delivery, on payment of such sum (if any) as shall have been found to be payable by the plaintiff, as aforesaid, of the said goods, without giving the defendant the option of retaining the same upon paying the damages assessed, and such writ of execution may be for the delivery of such goods; and if such goods so ordered to be delivered, or any part thereof, cannot be found, and unless the Court or a judge shall otherwise order, the Sheriff or Coroner shall distrain the defendant by all his lands and chattels, in the said Sheriff's bailiwick, till the defendant deliver such goods, or, at the option of the plaintiff, cause to be made of the defendant's goods the assessed value or damages, or a due proportion thereof; provided that 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, costs, and interest in such action or suit.

Execution may issue for delivery of goods.

Levy.

Computation of time.

239. In all case in which any particular number of days not expressed to be clear days, is prescribed by this Chapter or any other enactment regulating the practice, or by the rules or practice of the Court, the same shall be reckoned exclusively of the first day and inclusively of the last day, unless the last happen to fall on a Sunday, Christmas Day, Good Friday, or a day appointed a public fast or thanksgiving, in which case the time shall be reckoned exclusively of that day also.

Punishment of contempt.

240. Where any person is guilty of contempt for disobedience in vacation of a judge's order or of a rule of Court, it shall be lawful in either case for a judge in vacation to enforce obedience to the order or rule by attachment or execution.

Loss of bill of exchange not to be set up as defence.

241. 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.

242. In any action against an acceptor of a bill of exchange, or the maker of a promissory note, the defendant shall be at liberty to stay proceedings on payment of the debt and costs in that action only.

CHAP. 94.  
Stay of proceedings in certain actions.

*Prothonotary Taxing Costs, etc.*

243. 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 attorney's bill, the costs of the review and re-taxation shall be borne by the attorney whose bill has been so reduced.

Cases in which prothonotary may enter judgment.

244. 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; and, except as herein otherwise provided, before any such bill shall be charged against the plaintiff or defendant, it shall be allowed and signed by a judge.

Bills of costs to be examined by Prothonotary.

COSTS AND FEES.

245. All costs and fees for services performed shall be as prescribed in the Chapter "Of Costs and Fees."

246. Any person taking other or greater fees shall, for such offence, forfeit to the party aggrieved forty dollars, and also the amount of such excessive fees.

247. 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.

248. On all rules made absolute, or discharged, and on all rules opposed in the first instance, the costs shall be allowed to the successful party, unless the Court shall otherwise direct.

249. The costs attending the issue of any commission and of taking depositions thereunder, when used on trial, shall be costs in the cause.

250. The costs of every rule or order for the examina-

Costs, &c., as prescribed in Chapter.

Penalty for taking excessive fees.

How recovered.

Costs on rules, &c., to be allowed to successful party.

Costs on commission to be costs in cause.

Costs on examination de bene esse.

**CHAP. 94.** tion of witnesses *de bene esse* shall be costs in the cause, unless otherwise directed.

Costs on new trial.

251. If a new trial be granted without any mention of costs in the rule, the costs of the first trial shall not be allowed to the successful party, though he shall succeed in the second, unless the Court shall otherwise order. When a new trial is granted on the ground of misdirection, or that the verdict was against evidence, the cost of the first trial shall abide the event, unless the Court shall otherwise order.

No costs on excess of length in pleadings.

252. On the taxation of costs, as between attorney and client, no costs shall be allowed to the attorney in respect of any excess of length in any pleading; and in case any such costs shall be payable by the plaintiff to the defendant on account of such excess, the amount thereof shall be deducted from the attorney's bill.

Taxed costs must be filed.

253. All bills of costs when taxed shall be filed with the Prothonotary; and every bill of costs taxed on any rule or proceeding in a country case argued at Halifax shall be filed immediately after taxation at Halifax, otherwise no execution shall issue for enforcing payment of such costs.

Notice of taxation in Halifax.

254. Before taxation of costs accruing in Halifax, one day's notice shall be given to the opposite party, his counsel or attorney in Halifax; and the bill, with all affidavits and papers substantiating the charges therein, shall be filed with the Prothonotary previously to the giving of such notice; but notice of taxing costs shall not be necessary in any case where the defendant has not appeared in person, or by his attorney or guardian.

Execution for interlocutory costs.

255. When interlocutory costs shall be taxed against any party, execution may be issued for the recovery thereof.

Costs, how recoverable.

256. Attorneys' and Proctors' bills of costs may be sued for and recovered as any other debts; and either party may have any such bill 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 payable; but in cases where the taxation is contested the same shall be final.

Costs, how charged and paid.

257. All costs and fees shall be taxed, charged, and paid in such currency as shall at the time of their being so taxed and charged be the legal and established currency of this Province.

Costs in summary and appeal causes.

258. The judges of the Supreme Court shall in summary, sub-summary, and appeal causes tax all costs for necessary work done in such causes as allowed in declaration causes.

Costs below to be added in appeal causes.

259. In appeal causes the party succeeding in the Court above shall be entitled to have his costs from the

Court below added to his bill when taxed; and the judge CHAP. 94.  
 or court below shall tax and send up with the appeal papers  
 the costs on both sides.

260. The party in whose favor a judgment shall be given, Judgment to carry costs.  
 shall be entitled to recover from the opposite party his  
 taxable costs.

261. Any one of several defendants shall be entitled to Costs of one of several defendants.  
 his taxable costs when the plaintiff shall not prosecute his  
 suit to final judgment against him, and also in cases where,  
 upon the trial of the issue, a verdict shall pass in his favor,  
 unless, in case of a trial, the judge before whom the trial  
 was had shall certify that there was reasonable cause for  
 making him a party to the action.

262. If the plaintiff in any action, not brought upon Where less than \$3 recovered in certain actions, no costs.  
 contract, express or implied, and heretofore deemed an  
 action of trespass or trespass on the case, or in any action  
 or 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 nothing in this section shall be con- Proviso.  
 strued to deprive any plaintiff of his costs in any action  
 for trespass on any lands, or for entering into any tenement  
 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 behalf of the owner or occu-  
 pier.

263. When a judge's order is made a rule of Court, it Costs on judge's order made rule of court.  
 shall be a part of the rule that the costs of making the order  
 a rule of Court shall be paid by the party against whom  
 the order is made; provided an affidavit be made and filed  
 that the order has been served on the party or his attorney,  
 and disobeyed.

## EXECUTION.

264. Writs of execution shall be, as nearly as may be, Form and return of writs of execution.  
 in the form heretofore used, and shall be made returnable,  
 either in sixty days, or to the first day of the next succeed-  
 ing Term, and may be directed as writs of summons, or to  
 the Sheriff of any particular county; but in no case shall  
 an execution be returnable within less than sixty days.

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Endorsement on writ may be made.

265. It shall be competent for the party suing out the writ to direct by endorsement in what manner it is to be executed, which direction the officer shall obey, and the party shall in all cases specify upon the face of the writ, or by endorsement, for what amount it is to be levied.

When issuable.

266. No execution shall issue on a judgment until the bill of costs and record, or, in a summary cause, the bill of costs shall be filed.

Privilege of Provincial Parliament.

267. When any member of the Provincial Legislature, being taken under execution, shall be released by reason of his privilege, he may be taken under a new writ after the expiration of such privilege.

Mortgagor's interest may be sold.

268. On any writ of execution endorsed to levy on the goods and chattels of the defendant, the Sheriff may seize and sell the interest or equity of redemption in any goods and chattels of the party against whom the writ has 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.

Goods, &c., when bound by writ, &c.

269. No writ of execution shall bind the goods of the defendant, and no writ of execution or writ of attachment against the goods of an absent or absconding debtor shall prejudice the title to such goods acquired by any person *bonâ fide* and for a valuable consideration before the actual seizure or attachment 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, endorse thereon the time at which the same was received by him.

Coin, &c., may be taken.

270. 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.

Bank notes, &c., may be taken under writ.

271. 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 endorsement 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. CHAP. 94. •

272. 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. Effect of transfer of securities, &c.

273. 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. \* Sheriff to pay over money recovered.

274. 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. Surplus to be paid to defendant.

275. 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. Bond of indemnity to Sheriff.

276. 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. Sheriff to make return with writ.

277. 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. Articles exempted from levy.

278. 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, endorse thereon the time at which the same was received by him. Writ when to bind goods.



- **CHAP. 94.** 279. Judgments shall, in all cases, bear interest, and the same may be levied for under execution.

Interest may be levied for.

*Discharge, &c.*

Discharge of defendant from custody.

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

Satisfaction piece, how to be signed.

281. All satisfaction pieces shall be signed by the plaintiff or his personal representatives, or by an attorney specially authorized for that purpose, unless a judge upon special circumstances set forth in an affidavit, shall dispense with the necessity for such authorization.

Form.

The satisfaction piece may be in the form following:

In the Supreme Court. ———, 18 ———.

Satisfaction is acknowledged between ———, plaintiff, and ———, defendant, for ——— and costs.

Judgment entered on the ——— day of ———, in the year of our Lord one thousand eight hundred and ———.

GARNISHEES.

Judgment creditor to be examined in certain cases.

282. Any creditor who has obtained a judgment in the Supreme Court against any defendant, except under the Chapter "Of Suits against Absent or Absconding Debtors," may from time to time apply to the Court or a judge for a rule or order that the judgment debtor shall be orally examined before the judge or a commissioner as to any and what debts are owing to him: and the Court or judge may make such rule or order for the examination of the judgment debtor, and for the production of any books or documents; and the examination shall be conducted in the same manner as in case of an oral examination of an opposite party.

Judge's order as to debts due by third parties.

283. Upon the *ex parte* application of such judgment creditor, either before or after such oral examination, and upon his affidavit or that of his attorney stating that judgment has been recovered, and that it is still unsatisfied and to what amount, and that some third person is indebted to the judgment debtor and is within the jurisdiction, a judge may order that all debts owing by or accru-

ing from such third person to the judgment debtor shall be attached to answer the judgment. **CHAP. 94.**

284. Such third person is hereinafter called the garnishee; and service upon him of an order that debts due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee in such manner as the judge directs, shall bind such debts in his hands; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the judge to shew cause why he should not pay the judgment creditor the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt.

Debts in hands of garnishee, how bound.

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

Execution may issue in default of payment.

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

Proceedings when garnishee disputes liability.

287. Payment made by or execution levied upon the garnishee under any such proceedings shall be a valid discharge to him as against the judgment debtor to the amount paid or levied, although the proceedings should be afterwards set aside or the judgment be reversed. The costs of any application for an attachment under any of the five preceding sections and of any proceedings arising from or incidental to such application shall be in the discretion of the Court or a judge.

Garnishee discharged *pro rata* as against judgment debtor.

288. Nothing in the six preceding sections shall be construed to contravene the provisions of any law of the Dominion of Canada relating to insolvency.

Proviso as respects Canada Insolvent law.

#### EJECTMENT.

289. Actions of ejectment shall be commenced by writ of summons against all persons in possession of the property claimed, and shall in all cases be conducted as other actions; and damages may be given for the plaintiff

Action of ejectment, how commenced, &c.

14. on trial, provided they shall be specifically set forth in the writ; and, on judgment by default, the plaintiff shall be entitled to costs, and the damages may be assessed as in other cases of judgments by default, or they may form the subject of a separate suit, at the plaintiff's option.

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tied.

290. The writ shall describe the property claimed with reasonable certainty. It shall also state the names of all the persons in whom the title is alleged to be, and there shall be thereon endorsed a notice that if the defendant do not appear and defend the property sued for, or such part thereof as he may think fit, within the time specified in such notice, the plaintiff will be at liberty to sign judgment at the expiration of such time, and that the defendant may thereupon be turned out of possession. The writ shall be served in the same manner as other writs, or in such manner as the Court or a judge shall order, under any peculiar circumstances; and in case of vacant possession, the fact of such vacant possession shall be determined by the Court or a judge, and the service shall be by posting up a copy thereof upon the door of the dwelling, or other conspicuous part of the property.

Forms in eject-  
ment.

291. The following forms in ejectment shall be used, viz.: the writ, Schedule A, number 16; the notice endorsed on writ, Schedule A, number 17; judgment for non-appearance, Schedule A, number 18; judgment for plaintiff after appearance and plea, Schedule A, number 19; and where other forms are requisite, they shall be assimilated to the above.

Who may ap-  
pear.

292. Any person shall be permitted to appear, on filing an affidavit that he is in possession of the land, either by himself or his tenant; and also any person who would heretofore be entitled to appear; but the Court or a judge shall have power to strike out or confine defences set up by persons not so entitled.

Plea when con-  
sidered defence  
to whole.  
Defence may  
be limited.

293. A plea not confining the defence to a part of the premises, shall be considered a defence to the whole.

294. Any person appearing shall be at liberty to limit his defence by plea to a part only of the property mentioned in the writ, describing that part with reasonable certainty.

Substance and  
form of plea.

295. The plea shall be confined to a denial in whole or in part of the plaintiff's right to the possession claimed, or to a right of possession in himself with the plaintiff as tenant in common with the plaintiff, or to a denial that he was in possession of the whole or any part of the premises at the time of action brought, and is not withholding the same. The forms shall be those in Schedule / numbers 20, 21 and 22.

296. On the trial of any action of ejectment the defendant may set up any equitable defence which would be available in the Court of Equity in case the subject matter were there under adjudication; and such defence shall be by plea, beginning with the words, "For defence on equitable grounds," or words to the like effect. The plaintiff may reply, by leave of the Court or a judge, in answer to any equitable plea of the defendant, facts which avoid such plea on equitable grounds; provided that such replication shall begin with the words, "For replication on equitable grounds" or words to the like effect. If the plaintiff shall claim title under a mortgage or other contract, or the defence be founded on any defeasance, bond for a deed, contract, or other agreement, whether the action be brought for the foreclosure of a mortgage, or otherwise, the defendant may give in evidence, tender, payment, set-off or other equitable defence, if he shall, at the time of filing his plea, or subsequently by leave of the Court or a judge, who are hereby empowered to grant such leave in any stage of the cause, have given notice in writing of the nature of the defence on which he intends to rely; and particulars of demand and set-off may be obtained as in other actions; and in all such cases the defendant having the right of redemption or equitable estate in the lands, may pay to the plaintiff or bring into Court the amount due with costs; and thereupon the Court, by rule, may compel the plaintiff to make such conveyance or release as may be agreeable to Equity.

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Equitable defence may be set up.

297. If the justice of the case require it, the Court or a judge may make an order for the sale of the premises sought to be recovered, or any part thereof, and for the application of the proceeds, and for the release or other reconveyance of the same, or any part thereof, at any time before the sale; provided always that before the Court or a judge shall order such distribution of the proceeds, it shall be made to appear that all persons interested have had reasonable notice, by advertisement or otherwise, of such application.

Order for sale of premises may be made.

298. In case the plaintiff or any defendant shall refuse or neglect to make or perfect any such conveyance the Court may order such conveyance to be made by the Sheriff, which, when confirmed by the Court or a judge, shall have the same operation and effect as if made by a Master of the Court of Chancery, under a decree or order of that Court, when it existed in this Province.

Conveyance, how to be made.

299. Where the proceedings are had under the three last preceding sections, no writ of possession shall issue without the leave of the Court.

Writ of possession not to issue.

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Defendant neglecting to avail himself of equitable defence.

Want of certainty in pleadings.

Judgment for want of appearance and plea.

Issue and trial.

Action by joint tenants, &c.

Where plaintiff's title expires before trial.

Non-appearance of parties at trial.

300. Any defendant having an equitable defence of which he might avail himself, under section 296, and neglecting or refusing so to do, shall not be at liberty, without leave of the Court or a judge to apply for relief in Equity.

301. Want of reasonable certainty in the writ or plea shall not nullify it, but shall only be ground for application to the Court or a judge, for an order for better particulars as to the land claimed or defended, which the Court or a judge shall have power to give in all cases.

302. In case there be no appearance and plea within the time appointed; or if an appearance be entered but the defence limited to part only, the plaintiff shall be at liberty to sign 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.

303. In case an appearance and plea shall be entered either for the whole or part of the premises claimed, the cause shall be considered at issue; and the parties may proceed thereupon to trial as in other actions, and the question at the trial shall, except in the case hereinafter mentioned, be whether the statement in the writ of the title of the claimant be true or false, in whole or in part, and, if true, then which of the claimants, if more than one, is entitled; and also, whether he is entitled to any, and what damages for the wrongful withholding of such premises.

304. In case of such an action being brought by some or one of the several persons entitled as joint tenants, tenants in common, or co-parceners, any joint tenant, tenant in common, or co-parcener in possession, may plead that he defends as such, and admits the right of the claimant to an individual share of the property, but denies any actual ouster of him from the property; and upon the trial of such issue, the additional question of whether an actual ouster has taken place, shall be tried as at present, in an action of ejectment.

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

306. If the defendant appears, and the claimant does not appear at the trial, the claimant shall be non-suited; and if the claimant appears and the defendant does not appear, the claimant shall be entitled to recover as heretofore without any proof of his title.

307. Upon any judgment in ejectment for the recovery of possession and costs, there may be either one writ, or separate writs of execution for the recovery of possession and for costs, at the election of the claimants.

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Writs of possession.

308. The death of a claimant or defendant shall not cause the action to abate, but it may be continued as hereinafter mentioned.

Death of parties.

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

Death of one of several claimants.

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

When right does not survive to other claimant.

311. In case of a verdict for two or more claimants, if one of such claimants die before execution executed; the other claimant may, whether the legal right to the property shall survive or not, suggest the death in manner aforesaid, and proceed to judgment and execution for the recovery of possession of the entirety of the property and costs: but nothing herein contained shall affect the right of the legal representative of the deceased claimant, or the liability of the surviving claimant to such legal representative; and the entry and possession of such surviving claimant, under such execution, shall be considered as an entry and possession on behalf of such legal representative, in respect of the share of the property to which he shall be entitled as such representative, and the Court may direct possession to be delivered accordingly.

After verdict and before execution.

312. In case of the death of a sole claimant, or before trial of one of several claimants, whose right does not survive to another or others of the claimants, the legal representative of such claimant may, by leave of the Court or a judge, enter a suggestion of the death, and that he is such legal representative, and the action shall thereupon proceed; and if such suggestion be made before

Of sole claimant or one of several claimants before trial.

**CHAP. 91.** the trial, the truth of the suggestion shall be tried thereat, together with the title of the deceased claimant; and such judgment shall follow upon the verdict in favour of, or against the person making such suggestion as hereinbefore provided, with reference to a judgment for or against such claimant; and in case such suggestion in the case of a sole claimant be made after trial, and before execution executed by delivery of possession thereupon, and such suggestion be denied by the defendant within twelve days after notice thereof, or such further time as the Court or a judge may allow, then such suggestion shall be tried; and if, upon a trial therefor, a verdict shall pass for the person making such suggestion, he shall be entitled to such judgment as aforesaid for the recovery of possession and for the costs of and occasioned by such suggestion; and in case of a verdict for the defendant, such defendant shall be entitled to such judgment as aforesaid for costs.

Of one of several joint defendants.

313. In case of the death before or after judgment of one of several defendants in ejectment, who defend jointly, a suggestion may be made of the death, which suggestion shall not be traversable, but only be subject to be set aside if untrue, and the action may proceed against the surviving defendant to judgment and execution.

Of sole or all defendants before trial.

314. In case of the death of a sole defendant, or of all the defendants in ejectment, before trial, a suggestion may be made of the death, which suggestion shall not be traversable, but only be subject to be set aside if untrue; and the claimants shall be entitled to judgment for recovery of possession of the property, unless some other person shall appear and defend, within the time to be appointed for that purpose by the order of the Court or a judge, to be made upon the application of the claimants: and it shall be lawful for the Court or a judge, upon such suggestion being made, and upon such application as aforesaid, to order that the claimants shall be at liberty to sign judgment within such time as the Court or judge may think fit, unless the person then in possession, by himself or his tenants, or by the legal representative of the deceased defendant, shall, within such time, appear and defend the action, and such order may be served in the same manner as the writ; and in case such person shall appear and defend the same, proceedings may be taken against such new defendant, as if he had originally appeared and defended the action; and if no appearance be entered, and no defence made, then the claimant shall be at liberty to sign judgment pursuant to the order.

Of sole or all defendants after verdict.

315. In case of the death of a sole defendant, or of all the defendants in ejectment, after verdict, the claimants shall, nevertheless, be entitled to judgment, as if no

such death had taken place, and to proceed by execution for recovery of possession, without suggestion or revivor, and to proceed for the recovery of the costs in like manner as upon any other judgment for money against the legal representative of the deceased defendant or defendants. CHAP. 94.

316. In case of the death, before trial, of one of several defendants in ejectment, who defends separately for a portion of the property for which the other defendant or defendants do not defend, the same proceedings may be taken as to such portion as in the case of the death of a sole defendant; or the claimants may proceed against the surviving defendants in respect of the portion of the property for which they defend. Of one of several defendants before trial, defending for portion.

317. In case of the death, before trial, of one of several defendants in ejectment, who defends, separately, in respect of property for which surviving defendants also defend; it shall be lawful for the Court or a judge, at any time before the trial, to allow the person at the time of the death in possession of the property, or the legal representative of the deceased defendant, to appear and defend on such terms as may appear reasonable and just, upon the application of such person or representative; and if no such application be made, or leave granted, the claimant suggesting the death in manner aforesaid, may proceed against the surviving defendant or defendants to judgment and execution. Ditto, where survivors make defence.

318. The claimant in ejectment shall be at liberty at any time to discontinue the action, as to one or more of the defendants, by filing a discontinuance or rule therefor, as against such defendant or defendants, and giving notice thereof in writing to the defendant or defendants against whom the action is discontinued; and thereupon the defendant to whom such notice is given, shall be entitled to tax his costs of defence, and have execution therefor. Discontinuance as to one or more defendants.

319. In case one of several claimants shall be desirous to discontinue, he may apply to the Court or a judge to have his name struck out of the proceedings; and an order may be made thereupon, on such terms as to the Court or a judge may seem fit, and the action shall thereupon proceed at the suit of the other claimants. Discontinuance by one of several claimants.

320. A sole defendant, or all the defendants in ejectment, shall be at liberty to confess the action, as to the whole or part of the property, by giving to the claimant a notice headed in the court and cause, and signed by the defendant or defendants; such signatures to be attested by his or their attorney, and thereupon the claimant shall be entitled to, and may forthwith sign judgment and issue execution for the recovery of possession and costs. Defendant may confess in whole or in part.



## CHAP. 94.

One of several defendants may confess as to part of property.

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

Defendant defending separately may confess as to part.

322. In case one of several defendants in ejectment, who defends separately in respect of property for which other defendants also defend, shall be desirous of confessing the claimant's title, he may give a like notice thereof: and thereupon the claimant shall be entitled to, and may sign judgment against such defendant for, the costs occasioned by his defence; and may proceed in the action against the other defendants to judgment and execution.

Effect of judgment.

323. The effect of a judgment in such an action shall be the same as that of a judgment in the present action in ejectment.

Special verdict. Judgment for claimants and execution.

324. The jury may find a special verdict.

325. Upon finding for the claimants, judgment may be signed and execution issue, for the recovery of the possession, and for the damages awarded, and for the costs, as at present in the action of ejectment.

Security for costs in second action.

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

Judgment for defendant.

327. Upon finding for the defendants, or any of them, judgment may be signed and execution issue, for costs against the claimants named in the writ.

Power of court over proceedings.

328. The Court and the judges thereof may exercise over the proceedings in the action, the same jurisdiction which is at present exercised in the action of ejectment, so as to ensure a trial of the title, and of actual ouster when necessary.

## REPLEVIN.

## CHAP. 94.

329. Replevin may be brought for an unlawful taking, or for an unlawful detention, whether the original taking may have been lawful or not. Whenever any goods, chattels, deeds, bonds, debentures, promissory notes, bills of exchange, books of accounts, papers, writings, valuable securities, or other personal property or effects, have been wrongfully distrained under circumstances in which by the law of England replevin might be made, the person complaining of such distress as unlawful, may obtain a writ of replevin in the manner hereinafter prescribed; or in case any such goods, chattels, property and effects have been otherwise wrongfully taken or detained, the owner, or other person, or corporation, capable of maintaining an action of trespass or trover for personal property, may bring an action of replevin for the recovery thereof, and for the recovery of the damages sustained by reason of such unlawful caption and detention, or of such unlawful detention, in like manner as actions are brought and maintained by persons complaining of unlawful distresses.

When replevin may be brought.

330. The provisions herein contained shall not authorize the replevying of or taking out of the custody of any Sheriff or other officer, any personal property seized by him under any process issued out of the Supreme Court, or any district or county court of the Province.

Goods in custody of sheriff not repleviable.

331. No writ of replevin, except when 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;—

Affidavit to be filed before issue of writ.

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 writ. The affidavit may be in the form in Schedule A, number 23, or to the like effect.

332. A copy of such writ 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, or an inmate of the house where he resided as aforesaid.

Service of writ.

333. The Sheriff shall not serve a copy of the writ 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

When to be made

**CHAP. 94.** out of the county, or because the same is not in the possession of the defendant, or of any person for him. Before the Sheriff replevies, he shall take a bond in double the value of the property to be replevied, as stated in the writ, which bond shall be assignable to the defendant; and the bond and assignment thereof may be in the form in Schedule A, number 24, the condition being varied to correspond with the writ.

Bond to sheriff.

Where property is concealed, building may be broken open by sheriff after demand.

334. 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 in case 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 writ.

Sheriff may search defendant's person, and premises where property concealed.

335. 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 in case 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 writ.

Return of writ what to contain.

336. The Sheriff shall transmit, annexed to the return of the writ.

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 writ, 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.

Default for want of appearance after service.

337. In case the defendant has been duly served with a copy of the writ, and does not enter his appearance in the

suit within the time specified in such writ; the plaintiff may mark a default and proceed as in other personal actions, and according to the practice of the Supreme Court. CHAP. 94.

338. The defendant shall be entitled to plead in abatement or bar, and may plead as many pleas in defence as he thinks necessary, each of which, if the action was trespass and the taking complained of, or detinue and the detention only complained of, would constitute a legal defence. Plea to action.

339. Any plaintiff or defendant in replevin, who, if judgment were obtained would be entitled to relief against such judgment on equitable grounds, may plead the facts which entitle him to such relief by way of defence, and the Court shall receive such defence by way of plea; but such plea must begin with the words, "For defence on equitable grounds," or words to the like effect. Plea on equitable grounds.

340. When the action is founded on a wrongful detention, and not on the original taking of the property the writ may be the same as in an action of detinue. Writ in case of unlawful detention.

341. If the defendant justifies or avows the right to take or detain the property, in or upon any place in respect of which the same might be liable to forfeiture, or to distress for rent, or for damage feasant, or for any custom, rate or duty, by reason of any law, usage, or custom at the time when, existing and in force; he shall state in his plea of justification or avowry a place certain within the city, town, township, or village within the county, as the place at which such property was so distrained or taken. Justification or avowry must state locus.

342. When the replevin is brought for goods, chattels, or other personal property distrained for any cause, the venue shall be laid in the county in which the distress has been made. Venue where to be laid.

343. Notwithstanding the issue of a writ of replevin, 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 in Schedule A, number 25. 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 endorsing his name thereon, which endorsement shall be sufficient to enable such party to bring action thereon in his own name, against the several parties who have executed such security. Defendant may retain possession on giving security.

344. In actions of replevin, the jury shall be at liberty to award damages to either party in the suit, provided the writ shall claim damages. Jury may award damages.

345. The Supreme Court may, from time to time, make such rules for advancing and rendering easy and effectual the remedy by replevin, as well by regulating the practice to be observed in such actions as by prescribing and Court may make rules regulating practice.

**CHAP. 94.** changing the forms of writs and proceedings to be used therein, as the Court may deem conducive to the ends of justice, and all such rules, when published in the *Royal Gazette* newspaper, shall have the force of law.



OF SUITS AGAINST JOINT DEBTORS.

One or several defendants may be arrested.

346. Where there are several defendants, and it is not intended that all of them shall be arrested, the plaintiff or his attorney may direct the Sheriff to arrest one or more only of the defendants.

Action may proceed against defendants who have been served.

347. Where any action founded on contract is brought against several defendants, and the writ has been duly served on one or more of them, but no legal service can be made on the others by reason of their absence from the Province, the action may nevertheless be prosecuted against those who have been served.

Continuance may be granted upon cause shewn on affidavit.

348. If such joint debtor shall make application to the Court on affidavit, stating that it is necessary for him to receive instruction respecting such suit from his absent partner or joint debtor; that he cannot safely proceed to trial of the cause without communication with him, and that he is not seeking for delay only; the Court may, if it shall think fit, grant a reasonable imparlance.

Defendant not served may be admitted to defend before judgment.

349. If any such joint debtor, not having been served with process, shall come into the Province previously to the final determination of the suit, and shall apply to the Court to be admitted to defend, the Court shall admit him accordingly, and shall cause such amendment to be made in the proceedings as may be required to make the same consistent and regular.

Suggestion may be made as to absent defendants.

350. When some only of the defendants have been served with process, the plaintiff may file and serve a suggestion on such as have been so served, suggesting therein the names of those defendants who were absent out of the Province when the writ was issued, and who, on that account could not be served with process; and the truth of such suggestion shall be inquired into on the trial, and if found against the plaintiff he shall become non-suit.

Plea in abatement for non-joinder when allowed.

351. No plea in abatement for the non-joinder of a person as a co-defendant shall be allowed, unless it shall be stated in the plea that he was at the commencement of the suit resident within the jurisdiction of the Court, and unless his place of residence shall be stated with convenient certainty in an affidavit verifying the plea.

Replication to such plea.

352. To any plea in abatement of the non-joinder of another person, the plaintiff may reply that such person has been discharged by bankruptcy and certificate, or as an insolvent debtor.

353. If a joint debtor, absent at the commencement of the suit, shall come into the Province after final judgment and before the plaintiff shall have received full satisfaction thereof, the plaintiff may sue out a writ of *scire facias* against him, requiring him to show cause why execution should not issue against him to satisfy what may remain due on such judgment; and the defendant may plead either in bar to the original suit or in answer to the *scire facias*.

CHAP. 94.  
*Scire facias*  
against debt or  
returning after  
suit commen-  
ced.

354. The plaintiff after judgment recovered may take out execution thereon, and cause the same to be extended on the joint or separate property or on the persons of all the joint debtors; but such execution shall not be extended on the separate property or on the person of any joint debtor, not brought into Court as a party to the suit.

Execution, how  
to be extended.

ASSIGNMENT OF CHUSES IN ACTION.

355. Any assignee, by writing signed by the assignor of the entire interest in any chose in action founded on any contract for payment of money only, or in any judgment, decree or order for payment of money only, and who would have been entitled to maintain a suit in Equity, as such assignee, to enforce such contract or the payment of such money, and the executor or administrator of such assignee, shall be entitled, in his own name, to maintain such personal action in the Supreme Court, and have such final judgment and execution in as full a manner as the person originally entitled to such chose in action, judgment, decree or order, and whose interest has been assigned, might have had or done; and such assignee shall be so entitled, whether he shall derive immediately or remotely from the person so originally possessed of such right to sue thereon, and shall be considered to all intents and purposes, and whether for the purpose of releasing such right or discharging or satisfying such judgment, decree, or order, or otherwise, as the person originally entitled to the same had theretofore been; and it shall be lawful for any defendant in any action brought by the person so originally entitled, or by any such assignee as aforesaid, to plead by way of defence that the interest of the plaintiff in such action had been theretofore assigned in the manner prescribed by this Chapter: provided that nothing herein contained shall operate at law to transfer the right to the benefit of any bond, covenant, or agreement, collateral in its nature, unless the assignment thereof shall be made to the person entitled to the subject matter to which such bond, covenant, or agreement is so collateral, or to some person as trustee for him, and that nothing in the foregoing provisions contained shall apply to any covenant running with the land.

Assignee of  
chose in action  
may sue.

## CHAP. 94.

Assignor not to release or sue after assignment.

356. Upon the execution of any such assignment, the right of the assignor to release or sue upon such chose in action, judgment, decree or order, shall wholly cease and determine; and in case it shall happen that there shall have been more than one assignment made by the same person, the assignment thereof first made *bonâ fide* shall operate to transfer the right to release or sue upon the same; unless the second assignment thereof shall have been accepted *bonâ fide* accompanied by the possession of the instrument assigned, and without knowledge of the first assignment.

Notice of assignment to be given before action by assignee.

357. No action shall be brought upon any such assignment by such assignee, unless a notice in writing signed by him, his agent or attorney, stating the right of the assignee, and specifying his demand thereunder, shall have been served on the party to be sued, or left at his last place of abode, at least fourteen days before the commencement of such action.

Effect of release by assignor without such notice.

358. In any case in which a release of a chose in action, or a release of execution in any judgment, decree or order, shall have been executed by the assignor thereof, or payment shall have been made to him after the assignment thereof, and no notice of such assignment shall have been received by the person liable to be sued in relation to such chose in action, judgment, decree or order, it shall be lawful for such person—anything in this Chapter to the contrary notwithstanding—to rely on such payment or release, by way of defence to any action brought against him in respect of such chose in action, judgment, decree or order, unless release had been accepted, or such payment made with intent to defraud such assignee.

Defence against assignor available against assignee.

359. It shall be lawful for any defendant or person liable in respect of any such chose in action, judgment, decree or order, in any action brought in respect thereof by any such assignee, to have the same remedy and defence against the assignee and his representatives which he might have had against the assignor in case no such assignment had been made, and in case of payment to such assignee to plead such payment specially to such assignee.

## OF INTERPLEADER.

Where defendant shows subject matter of suit to be in third party, such party may be ordered to appear and maintain or relinquish claim.

360. If, in any action of assumpsit, debt, detinue or trover, the defendant, after declaration and before plea, shall by affidavit or otherwise show that he claims no interest in the subject matter of the suit, but that the right thereto is claimed or supposed to belong to some third party, who has sued or who is expected to sue for the same, and that such defendant does not in any manner

lude with such third party, but is ready to bring into court or to pay or to dispose of the subject matter of the action in such manner as the Court or any judge thereof by order or direct; or if an action shall have been commenced in respect of a common law claim for the recovery of money or goods, or where goods or chattels shall have been taken or are intended to be taken in execution under a writ issued from any Court having jurisdiction in the premises, and the defendant in such action, or the Sheriff or other officer shall apply for relief; the Court or a judge may make rules or orders calling upon such third party to appear and state the nature and particulars of his claim, and to maintain or relinquish the same, although the titles of the claimants to the money, goods or chattels in question, and the proceeds or value thereof, may not have a common origin, but may be adverse to and independent of one another.

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61. Upon such rule or order the Court or a judge may hear the allegations as well of such third party as of the plaintiff, and in the meantime may stay the proceedings in the action. Case may be heard upon such order.

62. The Court or a judge may finally order such third party to make himself defendant in the same or some other action, or to proceed to trial on a feigned issue; and may direct which of the parties shall be plaintiff or defendant on such trial; or, with the consent of the plaintiff and such third party, their counsel or attorneys, may dispose of the merits of their claims and determine the same in a summary manner. Third party may be made defendant, &c.

63. The Court or a judge may make such other rules and orders therein as to costs and other matters as may appear to be just and reasonable. Rules, &c., as to costs, &c., how made.

64. The judgment in the issue or action, and the decision of the Court or judge in a summary manner, shall be final and conclusive against the parties and all persons claiming under them. Judgment final.

65. If such third party shall not appear upon being served with such rule or order to maintain or relinquish his claim, or shall neglect to comply with any such order after appearance, the Court or a judge may make such order against such third party; and all claiming under him, shall be barred for ever from prosecuting his claims against the original defendant or his representatives; saving, nevertheless, the right or claim of such third party against the plaintiff; and may thereupon make such order between the defendant and the plaintiff as to costs and other matters as may appear just and reasonable. Effect of non-appearance of third party.

66. Any order made in pursuance of this Chapter by a single judge not sitting in open Court, shall be liable to be reviewed by the Court. Judge's order may be reviewed by Court.



**CHAP. 94.** be rescinded or altered by the Court in like manner as other orders made by a single judge.

Judge may refer proceedings to court.

367. If, upon application to a judge, in any stage of the proceedings, he shall think the matter more fit for the decision of the Court, he may refer it to the Court; and thereupon the Court shall hear and dispose of the same, as if the proceedings had been commenced by a rule of Court instead of the order of a judge.

Provisions of chapter made applicable to sheriff and other officers.

368. Where claim shall be made to any goods taken or intended to be taken under any writ of execution or attachment, issuing out of any Court, the Supreme Court or any judge thereof, upon application of a Sheriff, constable or other officer, made before or after the return of such process, and as well before as after any action brought against such Sheriff, constable or other officer, may call before them by rule of Court, as well the party issuing the process as the party making such claim; and thereupon exercise for the adjustment of such claims and the relief and protection of the Sheriff, constable or other officer, all or any of the powers and authorities hereinbefore contained, and make such rules and decisions as shall appear to be just, according to the circumstances of the case; and the costs of all such proceedings shall be in the discretion of the Court.

Rules to be entered of record, and to have effect of judgments.

369. All such rules, orders, matters and decisions, in pursuance of the nine preceding sections, excepting only the affidavit to be filed, may, together with the declaration in the cause, if any, be entered of record, with a note in the margin, or an endorsement thereon by the Prothonotary, expressing the date of entry, and which shall be evidence thereof. Every rule or order so entered shall have the effect of a judgment, except as to becoming a charge upon lands; and such rules or orders may be enforced by execution as in other cases.

#### ASSIGNMENT OF SECURITIES TO SURETY, ETC.

When surety pays debt creditor must assign securities held in respect thereof.

370. 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, 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

Process on such writs.

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 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.

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SCHEDULE A.

No. 1.

SS.

Victoria, by the grace of God, &c.

To the Sheriff of ———, or any other of our Sheriffs:

We command you to summon C. D., of ———, to appear in the Supreme Court at ———, within ——— days after the service of this writ, at the suit of A. B., who says that the said C. D. is indebted to him [*for work and materials provided by the plaintiff for the defendant, at his request, or as the case may be.*] and he claims ——— dollars.

Issued this ——— day of ——— A. D. 18—.

—————, Prothonotary.

E. F., plaintiff's attorney, [*or A. B., plaintiff in person.*]

No. 2.

SS.

Victoria, by the grace of God, &c.

To the Sheriff of ———, or to any other of our Sheriffs:

We command you forthwith, upon security being given according to law, to cause to be replevied to A. B., his cattle, [*or goods.*] viz., ———, which C. B., of ———, unjustly detains as it is said; and that you summon the said C. D., to appear in the Supreme Court, at ———, within ——— days after the service of this writ, at the suit of the said A. B., who says that the said C. D. is unjustly detaining the said cattle, [*or goods.*]

Issued this ——— day of ———, A. D. 18—.

—————, Prothonotary.

E. F., plaintiff's attorney, [*or A. B., plaintiff in person.*]

CHAP. 94.

## No. 3.

SS.

Victoria, by the grace of God, &amp;c.

To the Sheriff of \_\_\_\_\_, or any other of our Sheriffs:

We command you to summon C. D., late of \_\_\_\_\_, an absent or absconding debtor, to appear in the Supreme Court at \_\_\_\_\_, within thirty days \_\_\_\_\_, at the suit of A. B., who says that \_\_\_\_\_ and the plaintiff claims \_\_\_\_\_ dollars.

Issued the \_\_\_\_\_ day of \_\_\_\_\_, A. D., 18—.

\_\_\_\_\_, Prothonotary.

E. F., plaintiff's attorney, [or A. B., plaintiff in person.]

[To be endorsed.]

By oath for \_\_\_\_\_ [insert the sum sworn to or allowed by the judge.]

## No. 4.

SS.

Victoria, by the grace of God, &amp;c.

To the Sheriff of \_\_\_\_\_ or any other of our Sheriffs:

We command you to attach the goods, chattels or estate of C. D., late of \_\_\_\_\_, an absent or absconding debtor, to the value of \_\_\_\_\_, [the sum sworn to or for which the summons was allowed.] to respond the judgment which may be obtained by A. B., who hath taken proceedings against the said C. D., 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—.

\_\_\_\_\_, Prothonotary.

E. F., plaintiff's attorney, [or A. B., plaintiff in person.]

[To be endorsed.]

By oath for \_\_\_\_\_ [insert the sum sworn to or allowed when summons was issued.]

## No. 5.

SS.

Victoria, by the grace of God, &amp;c.

To the Sheriff of \_\_\_\_\_, or to any other of our Sheriffs:

We command you to summon G. H., of \_\_\_\_\_, the agent or trustee of C. D., late of \_\_\_\_\_, an absent or absconding debtor, to appear in our Supreme Court at \_\_\_\_\_, [being the county in which the agent resides,] within fifteen days after service, \_\_\_\_\_, to declare, discover and disclose what goods or credits of the said C. D., were in his hands or possession, or under his management or control, at the time of

the service of this writ upon him ———, in a suit prosecuted by A. B., against the said C. D., as an absent or absconding debtor, in our said Court at ———. CHAP. 94.

Issued this ——— day of ———, A. D., 18—.

—————, Prothonotary.

J. F., plaintiff's attorney [*or A. B., plaintiff in person.*]

No. 6.

SS.

Victoria, by the grace of God, &c.

To the Sheriff of ———, or any other of our Sheriffs:

We command you to take C. D. of ———, if he shall be found in your bailiwick, and him safely keep until he shall have given you bail, or made deposit according to law, in an action at the suit of A. B., or until the said C. D. shall by other lawful means be discharged from your custody; and we do further command you that immediately after the execution hereof you do return this writ into our Supreme Court at ———, together with the manner in which you shall have executed the same, and the day of the execution thereof; or if the same shall remain unexecuted, then that you do return the same at the expiration of one month from the date hereof.

Issued this ——— day of ———, A. D., 18—.

—————, Prothonotary.

J. F., plaintiff's attorney, [*or A. B., plaintiff in person.*]

*To be endorsed.*

By oath for [*here insert the sum sworn to.*]

No. 7.

*Writ where the defendant, being a British subject, resides out of this Province.*

SS.

Victoria, by the grace of God, &c.

To C. D. of ———, in the ———, of ———.

We command you that within [*here insert a sufficient number of days within which the defendant might appear with reference to the distance he may be at from this province,*] days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Supreme Court of Nova Scotia, at ———, in an action at the suit of A. B., who says that the said C. D. is indebted to him [*for work done and materials provided by the plaintiff for the defendant at his request, or the case may be,*] and take notice that in default of your

CHAP. 94. so doing, the said A. B. may, by leave of the Court or a judge, proceed therein to judgment and execution; and he claims \_\_\_\_\_.

Issued the \_\_\_\_\_ day of \_\_\_\_\_, A. D., 18—.

\_\_\_\_\_, Prothonotary.

E. F., plaintiff's attorney, [or A. B., plaintiff in person.]

*Memorandum to be subscribed on the writ.*

N.B.—This writ is to be served within \_\_\_\_\_ calendar months from the date hereof; or if renewed, from the date of such renewal, including the day of such date, and not afterwards.

*Endorsement to be made on the writ before service thereof.*

This writ is for service out of the jurisdiction of the court, and was issued by E. F., of \_\_\_\_\_, attorney for the said plaintiff, [or, this writ was issued in person by A. B. who resides at \_\_\_\_\_, mention plaintiff's place of residence.]

No. 8.

*Writ where a defendant, not being a British subject, resides out of this Province.*

SS.

Victoria, by the grace of God, &c.

To C. D., of \_\_\_\_\_, in \_\_\_\_\_.

We command you that within [here insert a sufficient number of days, within which the defendant might appear, with reference to the distance he may be at from Nova Scotia] days after the notice of this writ is served on you, inclusive of the day of such service, you do appear or cause an appearance to be entered for you in our Supreme Court of Nova Scotia at \_\_\_\_\_, in an action at the suit of A. B., who says that the said C. D. is indebted to him [for work and materials provided by the plaintiff for the defendant, at his request, or as the case may be,] and take notice that in default of your so doing the said A. B. may, by leave of the Court or a judge, proceed therein to judgment and execution; and he claims \_\_\_\_\_ dollars.

Issued the \_\_\_\_\_ day of \_\_\_\_\_, A. D., 18—.

\_\_\_\_\_, Prothonotary.

E. F., plaintiff's attorney, [or A. B., plaintiff in person.]

*Memorandum to be subscribed on the writ.*

N. B.—Notice of this writ is to be served within six calendar months from the date thereof, including the day of such date, and not afterwards.

Endorsements as in Schedule A, number 7.

*Notice of the foregoing writ.*

H., of ———, in ———.  
 ke notice that A. B., of ———, in the Province of  
 Scotia, has commenced an action at law against you  
 , in the Supreme Court of Nova Scotia, at ———, by  
 t of that Court, dated the ——— day of ———, A. D.,  
 in which he says that you are indebted to him [*for  
 done and materials provided by the plaintiff for the  
 dant, at his request, or as the case may be,*] and you are  
 red within ——— days after receipt of this notice, to  
 d the said action, by causing an appearance to be  
 ed for you in the said Court, to the said action, and  
 fault of your doing so, the said A. B. may, by leave  
 of Court or a judge, proceed thereon to judgment and  
 ction.

Following are the particulars of the said A. B.'s  
 , &c., &c. [signed] E. F., plaintiff's atty.,  
 [or A. B., plaintiff in person.]

No. 9.

## SPECIMENS OF FORMS.

*Particulars of demand.*

Following are the particulars of the plaintiff's  
 :

3.

30. Half year's rent to date, of house and premises in ——— street, Halifax,	\$102 00
12. 10 barrels of flour, at \$5,	50 00
1. Money received by defendant,	68 00

220 00

Paid, 60 00

Balance due, \$160 00

*Or,*

teacher's meat and goods, supplied between 1st of Jan'y, 1869, and the 1st Jan'y, 1870,	\$208 00
Paid,	80 00
Balance,	\$128 00

*Or,*

0. Principal and interest due on a bond, dated the  
 ay of ———.

CHAP. 94.*Or,*

\$360. Principal and interest due on a covenant contained in a deed, dated the — day of —, to pay \$400 and interest.

*Or,*

\$340 on a bill of exchange for \$400 dated the 2nd February, 1873. Accepted [*or drawn, or endorsed*] by the defendant.

*Or,*

\$200 on a guarantee, dated the 2nd February, 1873, whereby the defendant guaranteed the payment by E. F., of goods supplied, or to be supplied to him.

*In cases where interest is payable.*

The plaintiff also claims interest on \$— of the above sum from the date of the writ until judgment.

## No. 10.

Notice is hereby given, that if the defendant do not appear and plead within four days after the period specified in the writ for his appearance, the plaintiff shall be at liberty to sign [*judgment by default, if there are no particulars of demand annexed; and if there be particulars of demand*] final judgment for any sum not exceeding the sum claimed in his particulars of demand, with interest at the rate specified, and costs.

## No. 11.

In the Supreme Court, —, on the — day of —

A.D. 18—. [*Day of signing the judgment.*]

To wit: A. B., in his own proper person, [*or by his attorney,*] sued out a writ of summons against C. D., with the particulars annexed as follows:

[*here copy the particulars of demand.*]

And the said C. D. has not appeared: Therefore it is considered that the said A. B. recover against the said C. D. — dollars, together with \$—, for costs of suit.

## No. 12.

Cause, { A. B.,  
vs.  
C. D.

I appear for C. D., the defendant in this cause, [*or I appear in person.*]

E. F.

## No. 13.

CHAP. 94.*Writ of revivor.*

SS.

Victoria, by the grace of God, &amp;c.

To the Sheriff of ———, or to any other of our sheriffs :

We command you that you summon C. D., of ———, to appear in the Supreme Court at ———, within ——— days after the service of this writ, to shew cause why A. B. [or 'E. F., as executor of the last will and testament of A. B., deceased,' or as the case may be,] should not have execution against him [if against a representative, here insert, 'as executor of the last will and testament of ———, deceased,' or as the case may be,] of a judgment whereby the said A. B. [or as the case may be,] on the ——— day of ———, recovered against him, [or as the case may be,] \$——, and that you notify the said C. D. that in default of his so doing the said A. B. [or as the case may be] may proceed to execution.

Dated this ——— day of ———, A. D. 18—.

—————, Prothonotary.

G. H., Plaintiff's Attorney.

## No. 14.

*Form of a rule or summons where a judgment creditor applies for execution against a judgment debtor.*

[Formal parts as at present.]

C. D., to shew cause why A. B. [or as the case may be] should not be at liberty to enter a suggestion in an action, wherein the said A. B. was plaintiff, and the said E. F. was defendant, and wherein the said A. B. obtained judgment for \$—— against the said E. F. on the ——— day of ———, that it manifestly appears to the Court, that the said A. B. is entitled to have execution of the said judgment, and to issue execution thereupon, and why the said C. D. should not pay the said A. B. the costs of this application, to be taxed.

NOTE.—*The above form may be modified so as to meet the case of an application by or against the representative of a party to the judgment.*

## No. 15.

*Form of suggestion that the judgment creditor is entitled to execution against the judgment debtor.*

And now on the ——— day of ———, it is suggested and manifestly appears to the Court, that the said A. B. [or 'E.



CHAP. 94. F., as executor of the last will and testament of the said A. B., deceased,' *or as the case may be,*] is now entitled to have execution of the judgment aforesaid, against the said C. D. [*or 'against G. H. as the executor of the last will and testament of the said C. D.' or as the case may be.*] Therefore it is considered by the Court, that the said A. B. [*or 'E. F. as executor aforesaid,' or as the case may be,* ought to have execution of the judgment against the said C. D. [*or 'against G. H. as executor as aforesaid,' or as the case may be.*]

No. 16.

*Form of writ in ejectment.*

SS.

Victoria, by the grace of God, &c.

To the Sheriff of \_\_\_\_\_.

We command you to summon G. H., J. K., and L. M., to appear in the Supreme Court, at \_\_\_\_\_, within \_\_\_\_\_ days after the service of this writ, at the suit of A. B., C. D., and E. F., who say that the said G. H., J. K., and L. M., withhold the possession to which the said A. B., C. D., and E. F., or some, or one of them, claim to be entitled, [*of a certain house and ten acres of land*] situate at \_\_\_\_\_, in the County of \_\_\_\_\_, and described as follows: [*describe the property with reasonable certainty,*] and for the withholding of which they claim \_\_\_\_\_ dollars damages.

Issued this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

N. O., Plaintiff's Attorney.

\_\_\_\_\_, Prothonotary.

No. 17.

*Notice to be endorsed on the writ.*

Notice is hereby given, that if the defendant do not appear and defend the possession of the property claimed by the within writ, or such part thereof as he may be advised, the plaintiff will be at liberty to sign judgment at the expiration of four days after the period specified in the writ for his appearance, and the defendant may thereupon be turned out of possession.

No. 18.

*Judgment in case of non-appearance.*

G. H., J. K., and L. M., were summoned to answer A. B., C. D., and E. F., for withholding possession of [*a house*]

and ten acres of land] situate at ———, in the County of CHAP. 94.  
————, and described as follows\*:

And no appearance has been entered to the said writ, [or where defence has been made to a part, except as to— describe it.] Therefore it is considered that the said A. B., C. D., and E. F., do recover possession of the premises above mentioned, [or where defence is to part, except as to the part for which defence has been made as aforesaid,] with the appurtenances, and also \$——, for his costs of suit [in cases where damages shall have been assessed, add, and that he do also recover \$——, for his damages assessed in respect of the withholding possession of the same by the defendant.]

No. 19.

*Judgment in case of appearance.*

[As in the last form to the \*.]

And the defendants appear and defend the possession [or of part thereof, describing the part.] Jury empannelled and sworn, who say that the plaintiffs [or one of them, as the case may be,] are entitled to possession of the premises, [or to the said part thereof;] and they do assess damages for the detention thereof in the sum of \$——, to be paid to the said A. B., C. D., and E. F.

Therefore it is considered that the said A. B., C. D., and E. F., do recover [as above where judgment is for non-appearance,] and also the sum of \$——, by the jury assessed as aforesaid, together with costs of suit.

No. 20.

*Form of pleas in ejectment.*

The said C. D., [defendant] says that the plaintiffs are not, nor is either of them, entitled to the possession of the said messuage and lot of land claimed by them. [Or if the defendant only defends for a part,]—The said C. D. says he only defends for a part of the premises claimed by the plaintiff, and which is thus described; [describe it with reasonable certainty,] and he disclaims all right to the possession of the residue of said premises; and as to the part for which he defends, says that the said plaintiffs are not, nor is either of them, entitled to the possession of the part of the said premises above specified.

*Plea by landlord shall commence thus:* And E. F., admitted to defend as landlord of the said premises, [or part thereof, describing the part,] says that

## CHAP. 94.

## No. 21.

*Form of a plea under tenancy in common.*

And the defendant says that he is tenant in common of the premises [*or part, as the case may be,*] with the said plaintiff, [*or with A. B., one of the said plaintiffs,*] and defends as such, and admits the right of the said [*claimant*] to an undivided share of the said property, and denies any actual ouster of him from the said property.

## No. 22.

The said C. D. [*defendant*] says that he was not in possession of the whole or any part of the premises claimed in the plaintiff's writ at the time of the commencement of this suit, and does not withhold the same.

## No. 23.

In the Supreme Court.

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.

A. B.

Sworn to at ———, in the County of ———, this ——— day of ———, A. D. 18—, before me.

E. F., J. P.

## No. 24.

*Replevin Bond.*

[*Bond in the usual form from A. B. (plaintiff,) and E. F. and G. H.*]

Whereas the said A. B. has sued out a writ of replevin against the said 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 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. CHAP. 94.

*[Where the plaintiff himself does not join in the bond, the form must be altered to conform to the fact.]*

## No. 25.

*Security given by the defendant to obtain a return of 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 the said A. B. has sued out a writ of 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 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. 26.

*Bail bond.*

*[Bond in the usual form from C. D. (defendant) and E. F. and G. H.]*

The condition of this obligation is such that if the above bounden C. D. do appear in the Supreme Court at ———, on the ——— day of ———, to answer to the suit of A. B., and in case judgment shall be obtained against the said C. D., if he shall satisfy such judgment, or shall render himself, or be rendered by the said E. F. and G. H. into the custody of the Sheriff of the County of ———, then the said obligation to be void.

## SCHEDULE B.

## SPECIMENS OF FORMS OF PLEADINGS.

*Statements of causes of action in the writ.*

To answer the said A. B., who says that C. D. is indebted to him for [*here state the subject of the claim as in the following forms,*] and the plaintiff claims ——— dollars:

For work done and materials provided by the plaintiff for the defendant, at his request.

For money lent by the plaintiff to the defendant.

**CHAP. 94.** For money paid by the plaintiff for the defendant, at his request.

For money received by the defendant for the use of the plaintiff.

For money found to be due from the defendant to the plaintiff on an account stated between them.

For a messuage and lands sold and conveyed by the plaintiff to the defendant.

For the good will of a business of the plaintiff, sold and given up by the plaintiff to the defendant.

For the defendant's use, by the plaintiff's permission, of messuages and lands of the plaintiff.

For the defendant's use, by the plaintiff's permission, of a fishery of the plaintiff.

For the hire of [*as the case may be*] by the plaintiff, let to hire to the defendant.

For freight for the conveyance by the plaintiff, for the defendant at his request, of goods in ships.

For the demurrage of a ship of the plaintiff kept on demurrage by the defendant.

Who says,—that the defendant on the — day of —, A. D. —, by his promissory note, now over due, promised to pay to the plaintiff — dollars, two months after date, but did not pay the same.

Who says,—that one A. B. on, &c. [*date*] by his promissory note, now over due, promised to pay to the defendant, or order, — dollars, two months after date; and the defendant endorsed the same to the plaintiff, and the said note was duly presented for payment, and was dishonored, whereof the defendant had due notice, but did not pay the same.

Who says,—that the plaintiff on, &c. [*date*] by his bill of exchange, now over due, directed to the defendant, required the defendant to pay to the plaintiff — dollars, two months after date; and the defendant accepted the said bill, but did not pay the same.

Who says,—that the defendant and the plaintiff agreed to marry one another, and a reasonable time for such marriage has elapsed; and the plaintiff has always been ready and willing to marry the defendant; yet the defendant has neglected and refused to marry the plaintiff.

Who says,—that the plaintiff and defendant agreed to marry one another on a day now elapsed; and the plaintiff was ready and willing to marry the defendant on that day; yet the defendant neglected and refused to marry the plaintiff.

Who says,—that the defendant by warranting a horse to be then sound and quiet to ride, sold the horse to the plaintiff, yet the said horse was not then sound and quiet to ride.

Who says,—that the plaintiff and defendant agreed by CHAP. 94. charter party, that the plaintiff's ship, called the "Ariel," should, with all convenient speed, sail to R, or so near thereto as she could safely get; and that the defendant should there load her with a full cargo of tallow or other lawful merchandize, which she should carry to H, and there deliver on payment of freight, at \$—— per ton; and that the defendant should be allowed ten days for loading and ten for discharge, and ten days on demurrage, if required, at \$—— per day; and that the plaintiff did all things necessary on his part to entitle him to have the agreed cargo loaded on board the said ship at R, and that the time for so doing has elapsed, yet the defendant made default in loading the agreed cargo.

Who says,—that the plaintiff let to the defendant a house, No. —, for seven years, to hold from the — day of ———, A. D., 18—, at \$—— a year, payable quarterly, of which rent ——— quarters are due and unpaid.

Who says,—that the plaintiff, by deed, let to the defendant a house, No. —, to hold from the — day of ——— A. D. —; and the defendant, by the said deed, covenanted with the plaintiff well and substantially to repair the said house during the said term, [*according to the covenant,*] yet the said house was, during the said term, out of good and substantial repair.

*For wrongs, independent of contract.*

A. B. says that the defendant broke and entered certain land of the plaintiff called the Big Field, and depastured the same with cattle.

That the defendant assaulted and beat the plaintiff, and gave him into custody to a policeman, and caused him to be imprisoned in a police office.

That the defendant debauched and carnally knew the plaintiff's wife.

That the defendant converted to his own use the plaintiff's goods, that is to say: iron hoops, household furniture, [*as the case may be.*]

That the defendant detained from the plaintiff, his title deeds of land called Belmont, in the County of ———, that is to say, [*describe the deeds.*]

That the plaintiff was possessed of a mill, and by reason thereof, was entitled to the flow of a stream for working the same; and the defendant by cutting the bank of the said stream, diverted the water thereof away from the said mill.

That the defendant falsely and maliciously spoke and published of the plaintiff the words following, that is to say:—"He is a thief."

CHAP. 94. —[*If there be any damage, here state it with such reasonable particularity as to give notice to the plaintiff of the peculiar injury complained of: for instance*] whereby the plaintiff lost his situation as ———, in the employ of ———.

That the defendant falsely and maliciously printed and published of the plaintiff, in a newspaper called “——,” the words following, that is to say: “he is a regular prover under bankruptcies”; the defendant meaning thereby that the plaintiff had proved, and was in the habit of proving, fictitious debts against the estates of bankrupts, with the knowledge that such debts were fictitious.

*Commencement of a plea.*

The defendant by ———, his attorney, [*or in person,*] says, [*here state the substance of the plea.*]

And for a second plea the defendant says, [*here state the second plea.*]

NOTE.—*The several pleas should be written in separate paragraphs, and numbered either with figures or in words, in the body thereof, to prevent confusion.*

*Pleas in actions on contract.*

That he did not promise as alleged.

[*This plea is applicable to other declarations on simple contracts, not on bills and notes. It would be unobjectionable to use, “did not warrant,” “did not agree,” or any other appropriate denial.*]

That the alleged deed is not his deed.

That the alleged cause of action did not accrue within six years, [*state the period of limitation applicable to the case*] before this suit.

That before the action he satisfied and discharged the plaintiff’s claim by payment.

That the plaintiff at the commencement of this suit was, and still is, indebted to the defendant, in an amount equal to [*or greater than*] the plaintiff’s claim, for [*here state the cause of set-off, as in a declaration; see forms ante.*]

That after the alleged claim accrued, and before this suit, the plaintiff, by deed, released the defendant therefrom.

*Pleas in actions for wrongs, independent of contracts.*

That he did not commit the assault.

That he did what is complained of by the plaintiff’s leave.

That the plaintiff first assaulted the defendant, who thereupon necessarily committed the alleged assault in his own defence.

*Replications.*

plaintiff joins issue upon the defendant's—pleas.  
 plaintiff as to the second plea, says [*here state the  
 to the plea, as in the following forms.*]  
 the alleged release is not the plaintiff's deed.  
 the alleged release was procured by the fraud of  
 defendant.  
 the alleged set-off did not accrue within six years  
 of his suit.  
 the plaintiff was possessed of land whereon the  
 defendant was trespassing and doing damage, whereupon  
 plaintiff requested defendant to leave the said land,  
 but the defendant refused to do, and thereupon the  
 plaintiff laid his hands on defendant to remove him, doing  
 more than was necessary for that purpose, which is the  
 first assault of the plaintiff.

*New assignment.*

plaintiff as to the ——— and ——— pleas, says  
 he sues not for the trespasses therein admitted, but  
 for trespasses committed by the defendant in excess of the  
 rights, and also in other parts of the said land, and  
 on other occasions and for other purposes than those refer-  
 red to in the said pleas, [*as the case may be.*]  
 the plaintiff replies and new assigns, the new assign-  
 ment to be as follows :]  
 the plaintiff as to the ——— and ——— pleas, fur-  
 s, that he sues not only for the trespasses in those  
 mentioned, but also for, &c.  
 the plaintiff replies and new assigns to some of the  
 said new assigns only as to the others, the form may  
 be as follows :]  
 the plaintiff as to the ——— and ——— pleas, fur-  
 s, that he sues not for the trespasses in the ———  
 which are pleas not replied to,] admitted, but for the tres-  
 passes in the ——— pleas [*the pleas replied to,*] admitted,  
 for, &c.

Appeals from the Supreme Court to the Privy Council are regulated chiefly  
 by the Statute in Council of the twentieth day of March, 1863, printed in  
 number 43 to the Journals of the House of Assembly for 1863, and by a  
 Statute of the twenty-sixth June, 1873, published in the Royal Gazette of the  
 1st, 1874.



CHAP. 95.

## CHAPTER 95.

## OF PROCEDURE IN EQUITY.

## JURISDICTION, ETC.

Definition of terms.

Exclusive jurisdiction of equity court.

Proviso.

Court always open.

Judge shall make rules. Proviso.

1. In all cases of exclusive Chancery jurisdiction the terms "the Supreme Court," "the Court," "the Judges" and "Judge," except when otherwise expressed, are confined to the Court of the Equity Judge, or the Court or Judge occasionally exercising the Equity jurisdiction; and in all cases of concurrent jurisdiction those terms apply alike to such Court and Judge, and to the Supreme Court and its judges; and in all cases purely at common law, contradistinguished from Chancery jurisdiction, those terms mean the Supreme Court and its judges alone. All suits or other proceedings for the redemption or the foreclosure of mortgages, and for specific performance, and in relation to the real estate of infants, and all proceedings, matters, and things relating to the custody, care, and disposal of persons of unsound mind, and their estates and effects, and also all proceedings under the Chapter "Of Trusts and Trustees," are under the Equity jurisdiction, and shall be prosecuted and conducted accordingly; and the terms "the Supreme Court," "the Court," "the Judges," and "Judge," used in the sections and Chapters relating to such subjects, mean the Equity Judge, or the Equity Court, or the Judge or Court occasionally exercising the Equity jurisdiction. Provided that nothing herein shall apply to or affect Chapter 103 "Of the Sale of Lands under Foreclosure of Mortgage," the proceedings under which may continue to be in the Supreme Court and before the Judges thereof; and provided also that nothing herein contained shall be construed to abrogate, abridge, or interfere with any of the functions, power or authority which the Supreme Court or its judges had, or have, as a court of common law contradistinguished from, or concurrent with, the jurisdiction of Chancery in or over any of the subjects over which the common law judges have been accustomed to hold jurisdiction, as for example cases of mandamus, injunction, &c.

2. The Court of the Equity Judge shall be always open, and the other judges of the Supreme Court, or any of them, in cases where empowered to exercise the functions of the Equity Judge, shall have the full powers of the Court.

3. The Judge in Equity shall make rules to govern the proceedings and practice before him; but such rules shall

not go into operation until they shall have been published in the *Royal Gazette* CHAP. 95.

4. In equity cases motions shall be made to the Equity Judge, and arguments and hearings had before him; and he shall have power to direct issues, and also to hear and determine equity causes after trials of fact have been had; and he shall hear, direct and determine all matters of equity jurisdiction; but nothing in this Chapter shall be construed to make it necessary to send for consideration or decision before the Equity Judge in Halifax, such equity business as has heretofore been or hereafter can be heard and decided by the judges in the country.

Motions and arguments in equity cases to be before equity judge.

Proviso.

5. The Judge in Equity in all equitable cases and motions before him, shall regulate and direct the proceedings. In full bench and in other cases, civil or criminal, legal or equitable, the Chief Justice shall preside and regulate the proceedings; and the Judge in Equity shall have precedence next to him, and in the absence of the Chief Justice shall preside, and regulate and direct the proceedings.

Equity judge to direct proceedings in equitable cases. Chief Justice to preside on bench.

6. Questions in equity, in which the Judge in Equity may be interested, or have been professionally concerned, shall be brought before one or more judges of the Supreme Court, according to the nature of the case.

Where equity judge interested.

#### PRACTICE.

7. In all cases formerly determinable in Chancery and now conducted in the Supreme Court, the practice of the Supreme Court now or hereafter to be established, as far as it is applicable shall be observed, except in so far as altered or modified by statute or by rules made in pursuance of law in relation thereto; in other cases the practice of the English Chancery shall be adopted.

Practice of supreme court followed in equity.

8. All suits heretofore cognizable in Chancery shall be commenced in the same manner as personal actions, by writ of summons, in which the cause of action and the relief or remedy sought by the plaintiff shall be briefly and clearly stated in a narrative form, and not by counts as at common law; and it shall not be necessary that the same should be set forth in any technical or formal language or manner, or that any technical or formal statement should be used.

Equity suits, how begun.

9. The answer of the defendant shall in like manner be briefly and distinctly stated; and the defendant shall answer on oath fully according to the nature of the subject inquired of, although not specially interrogated. When the answer contains new matter by way of avoidance, and not of denial merely, the plaintiff may reply succinctly.

Defendant's answer.

Replication.

10. Either party may demur to the pleading of the

Demurrers.

**CHAP. 95.** adverse party; and such demurrer shall be heard and determined on the same principles as obtain in the Supreme Court.

**Hearing on writ and answer.** 11. After plea or answer the plaintiff may bring the cause to a hearing on writ and answer, in the same manner as a suit was formerly heard in Chancery on bill and answer; but the plaintiff shall give the defendant reasonable notice that he does not intend to produce evidence.

**Final judgment.** 12. In the final decision of cases on equity principles, the court shall give judgment according as the very right of the cause and matter in law shall appear unto them, and so as to afford unto the parties a complete remedy upon the principles which prevail in courts of equity, and may be applicable to the particular case.

**Masters.** 13. The Court shall have power to direct inquiries into matters of fact and account, by masters appointed by the Governor in Council, who shall act on the same principles and with the same powers as masters in Chancery; and the judge shall have power to refer to a master extraordinary to be by him appointed when he shall deem it advisable so to do. Every report of a master must be submitted to the Court, by whom it may be confirmed, modified, or set aside, after hearing the parties.

**Decisions, how enforced.** 14. Obedience to any judgment, rule or order of the Court may be enforced by attachment or execution.

**Service on defendants out of province in foreclosure suits.** 15. In cases of foreclosure when it shall be made to appear by affidavit that a defendant is out of the Province, an order may be made by the Court or Prothonotary for such defendant to appear on a certain day therein named, which order shall be published in the *Royal Gazette*, or in such other way, and for such time as the Court or Prothonotary shall direct; and the publication of such order shall be deemed good service on such defendant.

**Service on absent defendants generally.** 16. The several sections of Chapters 94 and 97, regarding service of process on an absent defendant, shall apply to all suits in Equity other than foreclosure suits; and to all cases where a trust has been created in the Province, or which may affect such subject, or when it may be necessary to issue a summons or order against a party absent from the Province when no suit has been commenced.

**Powers of court as to costs.** 17. The Court shall, in all equitable cases, have the same discretion in awarding or withholding costs, or directing the fund out of which they shall be paid, as is now exercised by the Court of Chancery in England.

**Proceedings on default, &c.** 18. In case of default for want of appearance and answer, or where all the material facts of the case which entitle the plaintiff to equitable relief are admitted by the defendant, the Court may thereupon make such order as

the right and justice of the case shall require, both as CHAP. 95.  
regards the relief prayed for and the costs of the suit.

19. No defendant in any suit shall be permitted to object for want of parties, in any case to which the following rules extend: When want of parties not ground of objection.

Rule 1.—Any residuary legatee or next of kin may, without including the remaining residuary legatees or next of kin, have a judgment for the administration of the personal estate of a deceased person.

Rule 2.—Any legatee interested in a legacy charged upon real estate, and any person interested in the proceeds of real estate directed to be sold, may, without including any other legatee or person interested in the proceeds of the estate, have a judgment for the administration of a deceased person.

Rule 3.—Any residuary devisee or heir may, without including any co-residuary devisee or co-heir, have the like judgment.

Rule 4.—Any one of several persons for whom a trust is held under any deed or instrument may, without including any other of such persons, have a judgment for the execution of the trusts of the deed or instrument.

Rule 5.—In all cases of suits for the protection of property pending litigation, and in the nature of waste, one person may sue on behalf of himself and of all persons having the same interest.

Rule 6.—Any executor or trustee may obtain a decree against one legatee, next of kin, or person for whom a trust is held, for the administration of the estate or the execution of trusts.

Rule 7.—In all equitable cases the Court may require any other person to be made a party to the suit, and may make such order in any particular case as the Court may deem just, 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.

Rule 8.—In all suits concerning real or personal estate vested in trustees under a will, settlement, or otherwise, such trustees shall represent the persons beneficially interested under the trust, in the same manner and to the same extent as the executors in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested under the trust, parties to the suit with the trustees or executors, at the Court may, upon consideration of the matters on the hearing, if it shall think fit, order such persons, or any of them, to be made parties.

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Certain persons need not be made parties to foreclosure suits.

20. In foreclosure suits, except when otherwise, it shall not be necessary to make the heirs or devisees, or widow of a deceased mortgagor or the executor or administrator may be proceeded against, and if there be no executor or administrator within the jurisdiction, the cause may be commenced by petition, setting forth the facts of the case, and praying for foreclosure and sale; and the Court may appoint a person to defend, and may direct such proceedings as may be necessary for promoting the just claims of the plaintiff and protecting the rights of any parties who may be interested in the mortgaged premises or the proceeds thereof, nor shall it be necessary to make *cestui que trust* or subsequent encumbrancers parties, but the Court may direct by rule or order in the cause such proceedings as may be deemed necessary to protect their rights.

Proceedings where there is no legal representative of deceased person who was interested.

21. If in any suit, or other proceeding before the Court, it shall appear to the Court that any deceased person who was interested in the matters in question had no legal personal representatives, it shall be lawful for the Court either to proceed in the absence of any person representing the estate of such deceased person, or to appoint some person to represent such estate for the purposes of the suit, or other proceeding, on such terms as to such person or persons, if any, as the Court shall think fit, either specially, or generally by public advertisement. And the order so made by the Court, or any order or decree consequent thereon, shall bind the estate of such deceased person in the same manner in every respect as if such person had been a duly constituted legal personal representative of such deceased person, and such representative had been a party to the proceedings or suit, and had appeared and submitted his rights and interests to the Court.

No legal cause of action in equitable writ.

22. No cause of action heretofore denominated equitable shall be contained in a writ or declaration which entitles to equitable relief.

Chapter "Of Witnesses and Evidence" applies to equity.

23. The provisions of Chapter 96 of the Revised Statutes, "Of Witnesses and Evidence," apply to proceedings and suits in the Equity Court; and the words used therein—"the Supreme Court," "the Court," "the Judges," "the Judge," include the Equity Court and the Judge and Judges who may administer the functions of that Court, except when inapplicable, or inconsistent with any law or any general rule or order of the said Court.

Witnesses, how examined.

24. Witnesses may be sworn and examined, and taken before some person appointed as examiner by the parties, their counsel, or attorneys, in writing, or before some examiner appointed by the Court to act generally in a particular case; and also, when the parties, their

Attorneys shall agree thereto in writing, by affidavits CHAP. 95.  
witnesses, taken respectively by the parties, or  
attorneys, or counsel, and sworn before any Judge or  
notary of the Supreme or Equity Court, or an  
officer of the Court, or a Commissioner for taking *de  
pose* examinations; and such persons in the respective  
places aforesaid are authorized to administer the necessary  
oaths to the witnesses so examined by them, or so depos-  
ed before them.

25. On payment or tender of their legal fees, as in the Attendance, &c.,  
of witnesses,  
how enforced.  
Supreme Court, the attendance of witnesses for examina-  
tion, as herein provided, and the production of papers,  
shall be enforced by order from the Judge or examiner, and  
under the provisions of Chapter 96 relating to the  
compelling of the attendance of unwilling witnesses, the  
serving of notices in that behalf, the contumacy of wit-  
nesses, and the production of papers; and any witness, or  
person wilfully swearing or affirming falsely on any such  
examination in any such affidavit, shall be liable to the  
penalties and penalties of wilful and corrupt perjury.

26. Examinations taken in any of the modes before Examinations at  
trials on circuit.  
mentioned shall be evidence on the hearing or other pro-  
ceedings in the causes; but on the trial of issue of circuit,  
witnesses shall be examined as heretofore, unless the  
parties shall have agreed to their, or any of their examina-  
tion, in any of the before mentioned modes, in which case  
the examination so agreed to be taken shall be evidence  
in the same manner as if the witnesses had been examined  
in open Court. But the judge before whom any issue is  
tried, may in his discretion, order any deposition of a wit-  
ness taken as aforesaid, for the hearing of the cause, to be  
submitted to the jury, if he shall deem it necessary or pro-  
per to do so.

27. The party at whose instance the witness was When witness  
previously ex-  
amined may tes-  
tify orally.  
examined as aforesaid shall not be at liberty to examine  
him orally at the trial, except by the leave of the judge; but  
the opposite party, at his own expense, may require his  
attendance before the jury for cross-examination, and the  
judge, at his discretion, may order any witness whose  
oral examination is given in evidence to be produced  
for oral examination, and may postpone the trial either for  
that purpose, or in case the party desiring cross-examina-  
tion in Court shall have duly subpoenaed the witness, and  
paid or tendered him his fees, and given sufficient notice  
of his desire to the other side, and the witness shall not  
be required to appear.

28. The Judge in Equity may order the examination of Judge may or-  
der oral exam-  
inations.  
witnesses orally before him, on hearing or other proceed-  
ings, when he shall deem it proper to do so.

## CHAP. 95.

Examinations  
de bene esse.

29. Nothing herein shall preclude examination from being taken *de bene esse*, under the law in that behalf, and being used in the Equity Court, when the party is not bound and does not desire to examine absolutely.

Trustees, &c.,  
may apply to  
judge for direc-  
tions.

30. Any trustee, executor, or administrator shall be at liberty, without the institution of a suit, to apply by petition to the Judge in Equity, for the opinion, advice, or direction of such judge 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 said judge shall think expedient. And it shall be in

Proceedings on  
application.

the power of the judge to direct any question arising on any such application to be argued before him, and to appoint counsel for that purpose where the parties fail and he shall think it necessary to do so. And he is also empowered to refer questions arising on such applications to the consideration and judgment of the Supreme Court, and to direct the argument to be had before the full Court. The trustee, executor, or administrator acting upon the opinion, advice, or direction given by the Judge in Equity or Supreme Court, 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 Chapter 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 Judge in Equity or Supreme Court.

Effect  
of directions.

Proviso.

## COUNTRY CAUSES.

Country causes  
to be tried by  
jury.Issues, how de-  
termined.

31. Country causes, unless the parties otherwise agree or the Judge in Equity otherwise order, shall continue to be tried before a jury, to whom issues of fact shall be submitted. The counsel or attorneys, within such time and in such manner as may be ordered by the Judge in Equity in the cause or by general rule, shall interchange in writing their respective suggestions of the issues required; which, or the suggestions of one party in case of the default of the other, being submitted with the pleadings to the Equity Judge, he shall settle the issues and return them to the Prothonotary, to be used on the trial, with such alterations

or additions as the presiding judge shall find to be necessary or proper : and the presiding judge shall have power to settle the issues when it appears to him upon oath that through accident or other sufficient cause they have not been settled by the Equity Judge ; and he shall be at liberty to order any amendment or to make any other order or rule which, in his judgment, shall be necessary or proper. CHAP. 95.

32. When the verdict on such issues shall determine all the matters in dispute, and further directions are not required, and a rule *nisi* for a new trial shall not be obtained from the judge or taken under the statute, final judgment may forthwith be entered on the verdict as the judge who tried the issues may direct ; and if the parties to such issues shall, either before or after the trial, agree for the adjustment of the suit or of any of the matters in dispute therein, it shall be in the power of the judge on circuit to make such orders or to enter such judgments as he may think proper for carrying into effect the agreement of the parties ; but the interests of parties not duly represented shall not be thereby affected. Issues, how finally disposed of.

33. The rule *nisi* for new trial in such cases shall be returned before the Judge in Equity, and shall be heard before him ; and if deemed expedient by the Court may be argued at the hearing, when a hearing is required. Rules nisi, how argued.

## MISCELLANEOUS.

34. In cases of issues directed by the Court or Judge in causes brought in Halifax, or issues sent from other counties, when tried in Halifax, the Equity Judge shall preside, and shall have power to direct a jury of persons residing within the limits of the City of Halifax, to be drawn by the Prothonotary from the Grand Jury panel or a special jury panel of the County of Halifax, and summoned by the Sheriff at such time as the Judge in Equity shall direct ; and jurors and witnesses summoned to attend at such trials shall be entitled to the same fees for attendance and travel, and subject to the same fines and liabilities for non-attendance, recoverable in the same manner, as in the case of jurors and witnesses in the Supreme Court. Issues, how tried in Halifax.

35. The Judge in Equity shall direct the mode of procedure and the manner of the testimony, and, when in equity suits in Halifax he may deem it expedient that the issues shall be tried in the country, he may so direct ; and the trial shall come on before the judge presiding on the circuit, in the county where the trial is ordered to be had ; and the standing of the cause on the docket shall be regulated by the commencement of the suit. Fees, &c., of jurors and witnesses.

Judge in equity to control procedure.

May cause issues to be tried in country.



**CHAP. 95.**

When court  
may dismiss  
suit.

Court may ap-  
point receiver.

Securities to be  
in name of  
Prothonotary.

36. It shall be competent for the Court to dismiss any suit for equitable relief, where the plaintiff shall not prosecute it with effect in such reasonable time as shall be allowed him by an order in that behalf.

37. The Court may make an order for the appointment of a receiver, when necessary in any suit; which order shall state the amount of security to be given, and the terms and conditions on which the assets shall be held by him.

38. In all cases, whenever security is required to be given by any parties by bond or recognizance under any order of the Court, except in the case of security for costs, the same shall be taken to the Prothonotary of the Court, *eo nomine*, and may be put in suit in the name of the Prothonotary of the Court for the time being.

## MORTGAGES.

Suits as to mort-  
gages, how  
brought.

Sales of mortga-  
ged property,  
how ordered on  
behalf of subse-  
quent encum-  
brancers.

39. It shall be competent for a mortgagor to bring suit for the redemption of his mortgage, and for a mortgagee to bring suit for the foreclosure thereof, on the same principles as obtained in the Court of Chancery.

40. 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 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 may think fit and proper, which terms may include the deposit of money in Court.

## SPECIFIC PERFORMANCE, ETC.

Specific per-  
formance.

Decision.

Court may order  
execution of any  
instrument.

\* Court may order  
execution for  
return of de-  
tained chattels.

41. The plaintiff in any suit to be brought in equity may claim from the defendant a specific performance of his contract; and the Court shall award or refuse the same, according to the right or justice of the case, and the principles which obtain in courts of equity.

42. Where a party to any cause shall neglect or refuse, after an order has passed therefor, to execute or acknowledge an instrument, such instrument may be executed or acknowledged by a master; and when confirmed by the Court, shall have the same efficacy as if made by the party so neglecting or refusing.

43. The Court shall have the power, if it shall see fit so to do, upon the application of the plaintiff in any action for the detention of any chattels, to order that execution shall issue for the return of the chattels detained, without giving the defendant the option of retaining such chattels upon

ing the value assessed, and that if such chattels cannot CHAP. 95.  
 found, and unless the Court shall otherwise order, the  
 writ shall levy on all the defendant's lands and chattels,  
 the defendant render such chattels, or, at the option of  
 plaintiff, that he cause to be made, of the defendant's  
 lands, or chattels, the assessed value of such chattels: Proviso.  
 provided that the plaintiff shall, either by the same or a sepa-  
 rate writ of execution, be entitled to levy for the damages,  
 costs, and interest in such action.

MANDAMUS.

In all cases in which the plaintiff shall claim that When plaintiff  
 may claim writ  
 of mandamus.  
 the defendant ought to fulfil any duty, in the fulfilment of  
 which the plaintiff is personally interested, the plaintiff  
 may bring his action by issuing a writ of summons, claim-  
 ing either together with any demand which may now be  
 made in such action, or separately, a writ of manda-  
 mus commanding the defendant to fulfil such duty.

The writ in such action shall set forth sufficient Nature of writ.  
 grounds upon which such claim is founded, and shall set  
 forth that the plaintiff is personally interested therein, and  
 that he sustains, or may sustain, damages by the non-per-  
 formance of such duty, and that performance thereof has  
 been demanded by him, and refused or neglected.

The pleadings and other proceedings in any action Pleadings, &c.  
 same as in ac-  
 tion for dam-  
 ages.  
 in which a writ of mandamus is claimed, shall be the same  
 in all respects, as nearly as may be, and costs shall be re-  
 payable by either party, as in an ordinary action for the  
 recovery of damages.

In case judgment shall be given for the plaintiff Court may is-  
 sue peremptory  
 writ of manda-  
 mus besides  
 executions.  
 a writ of mandamus do issue, it shall be lawful for the Court,  
 if it shall see fit, besides issuing execution in the ordinary  
 way for the costs and damages, also to issue a peremptory  
 writ of mandamus to the defendant, commanding him forth-  
 with to perform the duty to be enforced.

The writ need not recite the declaration or the Contents, mode  
 of issue, and re-  
 turn of writ.  
 contents therein stated, but shall simply command the per-  
 formance of the duty, and in other respects shall be in the  
 nature of an ordinary writ of execution, except that it shall  
 be directed to the party, and not to the Sheriff, and may  
 be returnable at any time and made returnable forthwith; and  
 return thereto, except that of compliance, shall be  
 made at any time, but time to return it may, upon sufficient ground,  
 be fixed by the Court, either with or without terms.

The writ of mandamus so issued as aforesaid, shall Effect of writ.  
 have the same force and effect as a peremptory writ of  
 mandamus issued out of the Court of Queen's Bench at  
 Westminster, and in case of disobedience may be enforced  
 as such.

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Proceedings  
when writ dis-  
obeyed.

50. The Court may, upon application by the plaintiff, besides or instead of proceeding against the disobedient party by attachment, direct that the act required to be done may be done by the plaintiff, or some other person appointed by the Court, at the expense of the defendant; and, upon the act being done, the amount of such expense may be ascertained by the Court, either by writ of inquiry or by reference to a master, as the Court may order; and the Court may order payment of the amount of such expenses and costs, and enforce payment thereof by execution.

Nothing herein  
to affect jurisdic-  
tion of Supreme  
Court.

51. Nothing herein contained shall take away the jurisdiction of the Supreme Court to grant writs of mandamus as heretofore; nor shall any writ of mandamus issued out of that Court be invalid by reason of the right of the prosecutor to proceed by action for mandamus under this Chapter.

Rule how grant-  
ed by Supreme  
Court.

52. Upon application, by motion, for any writ of mandamus in the Supreme Court, the rule may, in all cases, be absolute in the first instance, if the Court shall think fit; and the writ may bear date on the day of its issuing, and may be made returnable forthwith, but time may be allowed to return it by the Court or a Judge, either with or without terms.

**INJUNCTION.**

Writ of injunc-  
tion, when  
grantable.

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

Nature of writ  
of summons in  
such case.

54. The writ of summons in such action shall be in the same form as the writ of summons in any personal action; but on every such writ and copy thereof there shall be endorsed a notice, that in default of appearance the plaintiff may, besides proceeding to judgment and execution for damages and costs, apply for and obtain a writ of injunction.

Subsequent pro-  
ceedings in ac-  
tion.

55. The proceedings in such action shall be the same, as nearly as may be, and subject to the like control as the proceedings in an action to obtain a mandamus under the provisions hereinbefore contained; and in such action judgment may be given, that the writ of injunction do or do not issue, as justice may require; and in case of disobedience, such writ of injunction may be enforced by attachment by the Court.

56. It shall be lawful for the plaintiff at any time after the commencement of the action, and whether before or after judgment, to apply *ex parte* to the Court for a writ of injunction to restrain the defendant in such action, from the repetition or continuance of the wrongful act or breach of contract complained of, or the committal of any breach of contract or injury of a like kind arising out of the same contract, or relating to the same property or right; and such writ may be granted or denied by the Court upon terms as to the duration of the writ, keeping account, giving security or otherwise, as to such Court shall seem reasonable and just; and in case of disobedience such writ may be enforced by attachment by the Court.

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Writ of injunction, how granted.

57. It shall be lawful for the defendant in any action to plead by way of defence thereto, any matter which would entitle him to have a perpetual injunction in a Court of equity against the maintenance of such action; and the matter of such defence shall, if proved, or if judgment pass by default, be a bar to such action; and the defendant shall have judgment thereon with costs.

Injunction, how obtained by defendant.

58. In any action in which a right shall be involved, it shall be lawful for the Supreme Court or a judge by a summary order, in the nature of an injunction, to be made on motion in the cause, to restrain, prevent or modify the exercise of such right by any party in the action, until a judgment shall be had establishing such right, or until such other earlier time as to the Court shall seem fit, and on such terms, if any, as the Court may require, and in like manner as it would have been competent to the Court of Chancery to have done, if such right had been contested in a suit pending therein; and in like manner to renew, vary or set aside such order from time to time as the case may require; and it shall be lawful for the Court at the time of making such restraining order, if it shall seem fit, or if it shall be required by the party against whom such order is made, to direct that an issue shall be submitted to the jury, who shall try the principal matter respecting the existence or extent of such right; referring it to the jury also to try and inquire whether any damage or injury has been sustained by the party so injured, by the granting of such order, and the amount of such damage, if any; and such jury shall find upon the issue accordingly, and their finding shall be returned with the other findings in the cause: and judgment and execution shall be given and had for the amount so found, together with the costs of the defendant occasioned by the trial of such issue.

Restraining order in nature of injunction, how granted.

Court may submit issues to a jury.

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## REAL ESTATE OF LUNATICS AND INFANTS.

Proceedings as  
to real estate of  
lunatics, in-  
fants, &c.

59. 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, who shall proceed in a summary manner, on affidavits, to inquire into the merits of 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 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 may, on the filing of a bond by such guardian or next friend, or other person appointed by the Court, 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, 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.

Nature of order.

Effect of order.

60. 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 required by this Chapter, 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.

Nature of conveyance.

Report filed.

61. Upon any order for the sale of any property being made as aforesaid, the Court 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.

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Proceeds of sale under order, how disposed of.

62. 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.

Effect of sale.

63. 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.

Effect of conveyance.

## PERPETUATING TESTIMONY.

64. When a person shall be desirous to perpetuate the testimony of any witness, he may issue a writ of summons, which shall set forth briefly his title, claim, or interest, in or to the subject concerning which he desires to perpetuate the testimony, and the names of all parties interested or supposed to be interested therein, and the names of the witnesses proposed to be examined, which shall be served on the parties interested, or supposed so to be. A notice shall be served on such parties, with the writ or subsequent to the service thereof, which shall state when and where and before whom, the examination of each witness shall take place; but no witness shall be examined under these provisions unless the parties supposed to be interested shall have had at least ten days notice of such examination.

Nature and mode of issue of summons for perpetuating testimony.

65. The examination of the witnesses shall be taken before a commissioner for the examination of witnesses *de bene esse*, and in the same way as such examinations now take place; unless on application to the Court a special commissioner be appointed, when the examination shall take place before such special commissioner.

Evidence, how taken.

66. After the commissioner shall have engrossed the deposition of each witness, it shall be read to him, and he shall subscribe it; and the commissioner shall certify the time, place, and manner of his taking the deposition, and who attended at the taking thereof, and that the same was taken by him in perpetual remembrance of the facts stated therein.

Duties of commissioner.

67. The deposition and certificate, together with a true copy of the notice of examination, and an affidavit of the taking of such notice, stating upon whom and when the same was taken, shall be filed in the office of the Protho-

Deposition, &amp;c., filed.

**CHAP. 95.** notary of the county in which the examination shall have taken place, within ten days after the examination.

**Deposition used in suits.**

68. If any suits shall, either at the time of taking such deposition or at any time afterwards, be pending between the person at whose instance it was taken, and the persons named in the writ, or any of them, who were so notified, or any persons under either of the said parties respectively, concerning the title, claim, or interest set forth in the writ, the deposition so taken, or a certified copy of it from the Prothonotary's office, may be used in suits in the same manner, and subject to the same conditions and objections, as if it had been originally taken in and for such suit.

**Attendance of witnesses, how compelled.**

69. Any witness may be subpoenaed and compelled to give his testimony in perpetual remembrance of a thing as hereinbefore prescribed, in like manner and under the same penalties as witnesses subpoenaed to attend and give evidence on the trial of a cause.

**Costs connected with deposition, by whom payable.**

70. All costs incurred under these provisions on both sides shall, in the first instance, be paid by the party seeking to perpetuate testimony; but in case the deposition shall thereafter be used in any suit, and he shall therein obtain a judgment, it shall be discretionary with the Court to allow the costs in that suit to be taxed against and payable by the party against whom the judgment shall be so obtained.

#### COSTS.

**Costs in equitable suits.**

71. All costs shall be taxed by a judge, and the fees in equitable suits shall be taxed and allowed as in the Chapter "Of Costs and Fees."

**Penalty for exorbitant fees.**

72. Any person taking greater fees shall for such offence forfeit to the party aggrieved forty dollars, and also the amount of such excessive fees. 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.

#### APPEALS FROM JUDGE IN EQUITY.

**Appeals from equity judge to Supreme Court.**

73. An appeal shall in all cases, except matters of practice or of costs, lie from every decision, order, judgment and decree of the Judge in Equity to the Supreme Court in banc, and on such appeal being perfected as hereinafter provided, the matter so appealed from shall be entered on the next ensuing docket of the Supreme Court.

**Petition.**

74. The intention to appeal shall be signified by petition succinctly stating the grounds, addressed to the Judge in Equity, and accompanied by the certificate of counsel, (not being the attorney in the cause), that in his judgment there is reasonable cause of appeal.

75. The petition shall be presented within ten days from the date of the decision, order, judgment or decree appealed from, if the appellant reside in the County of Halifax, fourteen days if in any other county in Nova Scotia proper, and twenty days if in Cape Breton. The appellant shall cause to be entered with the Prothonotary at Halifax, security in One hundred and sixty dollars to pay to the respondent such costs as the Supreme Court may appoint, in case the order or decree shall not be reversed. The security shall be by bond to Her Majesty, with at least one good surety, who shall justify; but if the Judge shall so direct, the security shall be by the deposit with the Prothonotary at Halifax of such sum of money as may be ordered, not exceeding One hundred and sixty dollars. The petition shall set forth specifically the grounds of appeal; and the appellant shall on the argument of the appeal, be confined to the grounds stated in the petition.

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Proceedings on  
petition.

Contents of pe-  
tition.

76. Stay of proceedings shall not be consequent upon appeals unless the Judge in Equity, upon special application, shall so order, or unless in special cases the Supreme Court shall interpose to that effect. The application may be contained in the petition of appeal, and in any case shall be at the peril of costs in the discretion of the Judge, if unsuccessful.

Stay of proceed-  
ings.

77. The petition shall be dismissed if the security be not perfected with the Prothonotary at Halifax within the time limited; unless upon application to the Judge in Equity the time shall be extended.

Petition when  
dismissed.

78. There shall be an appeal as aforesaid from the decisions of the Judge in Equity, to the full bench of the Supreme Court, and the Judge in Equity may be a member of the Court of appeal; and such appeals shall be subject to such conditions as regards stay of proceedings and costs, when not provided for by legislative enactment as may be prescribed by any rules to be made by the Judge; and such appeals may be heard out of Term if the attendance of the judges can be procured, or, if heard in Term, such portion of the Term shall be allotted for them as may be requisite and convenient.

General provi-  
sions as to ap-  
peals.



CHAP. 96.

## CHAPTER 96.

## OF WITNESSES AND EVIDENCE.

Commission for taking depositions of absent witnesses, how issued, &c.

1. In any civil action the Court or a judge or prothonotary, upon sufficient cause being shewn by affidavit, may order a commission to issue for taking the depositions of witnesses residing out of the Province, in such manner and under such restrictions as the Court or judge or prothonotary may direct; and the depositions so taken may be read in evidence at the trial of the cause; and if the parties in any cause pending in any court consent in writing, to examine witnesses residing out of the Province, whether by interrogatories or *vivâ voce*, such consent and the proceedings had thereunder shall be as valid in all respects as if a commission had been sued out and the proceedings had thereunder.

Examinations, by whom opened, objections when to be taken; proceedings thereon.

2. Examinations of witnesses residing abroad may be opened by the prothonotary of the court 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.

Supreme court may order examinations of witnesses under commissions from courts abroad.

3. 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.

Depositions of witnesses about to leave province, aged or infirm, how taken.

4. In civil causes depositions of witnesses who are about to leave the Province, or are aged, infirm, or otherwise unable to travel, may be taken before a judge or commissioner, on due notice being given to the adverse party; and any party, upon shewing sufficient cause by affidavit, may obtain from a judge or commissioner an order in such terms as he shall think fit, to compel an

unwilling witness in any such cause to give evidence before the judge or commissioner. CHAP. 96.

5. Where such witnesses reside in any other county than that in which the cause is to be tried, a judge or commissioner on sufficient cause being shewn by affidavit, may give such order as he shall think fit for the depositions *de bene esse* of such witnesses, to be taken before a judge or commissioner by interrogatories or otherwise.

When such witnesses do not reside in county where case is pending.

6. In all cases of depositions to be taken before any judge or commissioner, at least twenty-four hours notice in writing shall be given to the adverse party or to his attorney, where such party or his attorney resides within the county, and an additional twenty-four hours notice for every twenty miles that such party or his attorney shall reside beyond the limits of the county; and such notice shall in all cases contain the names of the witnesses to be examined.

Notice of depositions to be given; length and contents of notice.

7. Where any rule or order shall be made for examination of witnesses or production of papers under any of the provisions of this Chapter, and the rule or order together with a notice containing the time and place of attendance, signed by the person who is to take the examination, shall have been duly served on the party to be examined, and he shall have been tendered his legal fees for attendance and travel, the refusal or neglect to obey any such rule or order shall be deemed a contempt of court, and may be punished by process of contempt.

Refusal of witness to obey order for examination, a contempt of court.

8. No witness shall be compelled under any rule or order under this Chapter to produce any writing or document that he could not be compelled to produce on trial, nor to answer any question he would not be bound to answer in court.

Writings and documents; what to be produced.

9. No deposition taken *de bene esse* to be used on trials in this Province, shall be read in evidence without the consent of the party against whom the same is offered; unless the judge shall be satisfied that the deponent is dead, or beyond the jurisdiction, or unable from some infirmity to attend the trial; but in case of his being so satisfied, the deposition, certified under the hand of the judge or commissioner, shall, without proof of his signature, be received and read in evidence, saving all just exceptions.

Depositions when to be read in evidence.

10. No examinations of witnesses residing abroad or taken *de bene esse* shall be set aside by the Court or any judge thereof, unless the party objecting shall lay grounds by affidavit, which may be opposed as in other cases, and 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, which shall be so expressed in the order.

Examinations *de bene esse* not to be set aside for technical objections.

## CHAP. 96.

In Supreme court where discovery is sought, interrogatories may be served on opposite party, &c.

How attested.

Neglect to answer deemed contempt of court.

In case of insufficient answer, party may, by order, be examined orally.

Order for oral examination, effect of.

Answers may be used as evidence.

Affidavits in answer to new matter.

11. In all causes in the Supreme Court, by order of the Court or a judge, the plaintiff or defendant may at any time deliver to the opposite party, or his attorney, provided such party, if not a body corporate, would be liable to be called and examined as a witness upon such matter, interrogatories in writing upon any matter as to which discovery may be sought; and require such party, or, in the case of a body corporate, any of the officers of such body corporate, within ten days, to answer the questions in writing, by affidavit, to be sworn before and attested by the Court, a judge, or commissioner, or justice of the peace, and to be subscribed by the party answering, and filed in the Prothonotary's office, and notice thereof given to the attorney on the opposite side; and any party or officer omitting, without just cause, sufficiently to answer all questions as to which a discovery may be sought within the above time, or such extended time as the Court or a judge shall allow, shall be deemed to have committed a contempt of the Court, and shall be liable to be proceeded against accordingly.

12. In case of omission, without just cause, to answer sufficiently such written interrogatories, it shall be lawful for the Court or a judge at their discretion to direct an oral examination of the interrogated party, as to such points as they may direct, before a judge or commissioner; and the Court or a judge may, by such rule or order, or any subsequent rule or order, command the attendance of such party before the person appointed to take such examination, for the purpose of being orally examined as aforesaid, or the production of any writings or other documents to be mentioned in such rule or order, and may impose therein such terms as to such examination, and the costs of the application, and the proceedings thereon, and otherwise, as to such Court or judge shall seem just.

13. Such rule or order shall have the same force and effect, and may be proceeded upon, as nearly as may be, in like manner as an order made for the deposition *de bene esse* of witnesses about to leave the Province, to be taken before a judge or commissioner; except that the answers to the interrogatories, or the oral examinations, shall be hold to be taken absolutely, and not *de bene esse*, unless otherwise specially ordered.

14. The answers to the interrogatories filed as aforesaid, and the answers on the said oral examination, may be used as evidence taken under commission may be used, and without the party offering the same being precluded from controverting or contradicting any part thereof.

15. Upon motions founded upon affidavits, it shall be lawful for either party, with leave of the Court or a judge,

to make affidavits in answer to the affidavits of the opposite party upon any new matter arising out of such affidavits, subject to all such rules as may hereafter be made respecting such affidavits. **CHAP. 96.**

16. Upon the hearing of any motion or summons it shall be lawful for the Court or a judge, at their discretion, and upon such terms as they shall think reasonable, from time to time, to order such documents as they may think fit, to be produced, and such witnesses as they may think necessary, to appear and be examined *visà voce*, either before such Court or judge, or before a commissioner; and upon hearing such evidence, or reading the report of such commissioner, to make such rule or order as may be just.

Court or judge may order documents to be produced and witnesses examined *visà voce*.

17. The Court or a judge may, by such rule or order, or any subsequent rule or order, command the attendance of the witnesses named therein, for the purpose of being examined, or the production of any writings or other documents to be mentioned in such rule or order; and such rule or order shall be proceeded upon as nearly as may be, in the same manner as rules or orders made for the depositions *de bene esse* of witnesses, to be taken before a judge or commissioner, are now proceeded upon, and it shall be lawful for the Court, or judge, or commissioner, to adjourn the examination from time to time, as occasion may require; and the proceedings upon such examination shall be conducted, and the depositions taken down, as nearly as may be in the mode now in use with respect to the *visà voce* examination of witnesses *de bene esse* when about to leave the Province.

May command attendance of witnesses or production of documents; proceedings under order, &c.

Proceedings to be conducted as in examinations *de bene esse*.

18. Any party to any civil action or other civil proceedings in the Supreme Court, requiring the affidavit of a person who refuses to make an affidavit, may apply by summons for an order to such person to appear and be examined upon oath before a judge or commissioner, to whom it may be most convenient to refer such examination, as to the matter concerning which he has refused to make an affidavit; and a judge may, if he think fit, make such order for the attendance of such person before the person therein appointed to take such examination, for the purpose of being examined as aforesaid, and for the production of any writings or documents to be mentioned in such order, and may thereupon impose such terms as to such examination, and the costs of the application and proceedings thereon, as he shall think fit.

Application by summons to compel examination of party refusing to make affidavit.

19. Upon the application of either party to any cause or other civil proceeding in the Supreme Court, upon an affidavit of such party of his belief that any document, the production of which he is entitled for the purpose of discovery or otherwise, is in the possession or power of

Production of documents in hands of opposite party.

**CHAP. 96.** the opposite party, it shall be lawful for the Court or a judge to order that the party against whom such application is made, or if such party is a body corporate that some officer to be named of such body corporate, shall answer on affidavit, stating what documents he has in his possession or power relating to the matters in dispute, or what he knows as to the custody in which they are, and whether he objects, and if so, on what grounds, to the production of such as are in his possession or power; and upon such affidavits being made the Court or judge may make such further order thereon as shall be just.

Depositions to be returned to prothonotary; how used; effect of.

20. Depositions taken by virtue of the four next preceding sections shall be carefully taken down by the examiner, and by him be returned to and kept in the office of the Prothonotary of the Court, and office copies of such depositions may be given out and the depositions may be otherwise used in the same manner as in the case of depositions taken *de bene esse* of witnesses about to leave the Province, except that the depositions shall be held to be taken absolutely, unless otherwise specially ordered.

Report of judge or commissioner.

21. It shall be lawful for any judge or commissioner, authorized under any rule or order for taking examinations under the said four sections, or under any rule or order for taking an oral examination of an interrogated party as aforesaid, and he is hereby required to make, if need be, a special report to the Court touching such examination and the conduct or absence of any witness or other person thereon or relating thereto; and the Court is hereby authorized to institute such proceedings, and make such order or orders upon such report as justice may require, and as may be instituted and made in any case of contempt of the Court; and the costs of every application for any of such rules or orders, and of the rules and orders and the proceedings thereon, shall be in the discretion of the Court or a judge.

Costs of application to be discretionary.

Written or printed documents may be exhibited for admission; notice when and how given; costs in case of refusal.

22. Either party in any civil action may exhibit to the adverse party or his attorney, any written or printed document to be used at the trial of the cause, and require him within eight days to enter into a rule to admit the same; and if the party so required shall neglect or refuse so to do, and the judge before whom the issue is tried shall be of opinion that the instrument proved was necessary to support the cause of the party producing it, the party so neglecting or refusing shall be liable to pay the fees of the witnesses necessary for proving the same.

Costs of proof of documents to be disallowed when party neglects to exhibit.

23. No witnesses' fees shall be allowed in any case within the preceding section, to a party who shall have adduced in support of an issue, of which it was incumbent on him to prove the affirmative, any written or printed

document which shall not have been exhibited a reasonable time before the trial or inquiry to the opposite party; unless sufficient cause shall be shown on taxation, why the notice could not have been given. **CHAP. 96.**

24. No charge for preparing to prove any such document incurred before the service of the notice, or after an offer by the adverse party to admit the same, shall be allowed, except those charges necessarily incurred in consequence of some act of the adverse party, after the service of notice and before the offer of admission. What costs of proof of documents to be allowed, and what not.

25. In case of written documents exhibited as aforesaid and not admitted; if the Court or judge who tried the cause or the judge who shall tax the costs, shall be of opinion on hearing the parties, that the written documents were not required on the trial, and that the party producing or proving them had not reasonable ground for believing they would be required, the party proving the documents shall pay the costs thereof; whatever may be the result of the cause. In case documents not requisite on trial, party proving them to pay costs.

26. Notwithstanding such written documents may have been required, if the Court or the judge who tried the cause or the judge who may tax the costs, shall be of opinion on hearing the parties, that the party declining to admit such documents had reasonable and just grounds for declining, such party shall not be liable for the costs of proving the written documents absolutely and in any result of the cause; but such costs shall be costs in the cause, subject to the ordinary rules. If court think party who declined to admit documents had just grounds, costs to be costs in cause.

27. 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 Proclamations, treaties, judgments, affidavits, &c. in what cases admitted as evidence, &c., how proved.

**CHAP. 96.** 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 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 without proof of signature, &c., admissible here.

28. 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.

29. 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.

30. 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

e 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 hereto, 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.

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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 same here.

31. 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

Proof of register of British ship.



**CHAP. 96.** 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, 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.

32. 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, shall be receivable in evidence to the same extent as the originals.

Certified copies of deeds, &c., may be received as evidence.

33. 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 evidence.

34. 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 shewn 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.

35. 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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Notice to be given to opposite party.

Certificate of registrar of deeds received as evidence of registry.

36. 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.

37. A certificate of the Prothonotary at Halifax, on the plan of any township returned under the thirty-first section of Chapter Seventy-nine "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.

38. 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.

39. 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.

40. No person shall be an incompetent witness by reason of incapacity from crime or from interest.

Witness not incompetent from crime or interest.

41. 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 compel-

Competent witnesses.

**CHAP. 96.** lable to give evidence, either *vivâ 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.

Parties excluded from giving evidence in suits by or against executors, &c.

Proviso.

Incompetent witnesses.

Communications of husband to wife, &c., not to be disclosed.

Not to apply to actions brought for adultery.

Party producing witness not to give evidence of his bad character; but may contradict him.

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.

42. 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 instituted in consequence of adultery.

43. 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.

44. 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.

45. 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. CHAP. 96.

46. 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.

Evidence of inconsistent statement of witness, when to be received.

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

Examination of witness as to previous statement in writing.

48. 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.

49. 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.

Subpoena issued by J.P. when witness resides over five miles distant.

50. 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, &c., until legal fees are tendered.

**CHAP. 96.**  
 Judge's testi-  
 mony, how  
 taken and used.

51. 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.

**Affirmation.**

52. 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 empow-  
 ered to admin-  
 ister oaths, &c.**

53. 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  
 acts to be valid.**

54. 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, 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 with- **CHAP. 97.**  
in this Province.

55. 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 to take examinations, depositions, affirmations or answers. Definition of terms.

56. 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.

57. Nothing herein shall be construed to contravene or conflict with any legislation (*intra vires*) of the Parliament of Canada. Not to conflict with Canada law.

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## CHAPTER 97.

### OF SUITS AGAINST ABSENT OR ABSCONDING DEBTORS.

1. Suits claiming twenty dollars and upwards may be prosecuted, as well within the City of Halifax as elsewhere, against persons absconding or absent out of the Province; such suits to be commenced by summons stating the defendant to be absconding or absent out of the Province, and containing the cause of action, with particulars when a liquidated sum is claimed, returnable within thirty days. Suit against absent debtor begun by thirty day summons.

2. Before the summons issues an affidavit of cause of action shall be made, and the sum endorsed on the summons as in cases of holding to bail, with or without a judge's order; and the affidavit shall also state that the defendant is absent or absconding from the Province: a copy of the summons shall be left at the last place of defendant's abode; and no rule to plead or notice of trial shall be required. Affidavit before issue of summons.

3. At or after the commencement of action, and without further or other affidavit, the plaintiff may sue out attachment to take property, on which attachment shall be endorsed the sum endorsed on the original summons. Attachment may be sued out.

4. The Sheriff to whom a writ of attachment is directed, shall levy for the amount endorsed on the writ, with one hundred and twenty dollars for probable costs in declaration causes, and twenty-eight dollars in summary causes. For what amount sheriff shall levy.

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Goods exhibited to be appraised before levy.

Attachment only binds from levy.

Perishable goods may be sold by order of court, unless security is given.

5. Where goods are exhibited to the Sheriff as the property of the absent or absconding debtor, they shall be valued by two sworn appraisers, and upon an appraisal being made under their hands, the Sheriff shall levy upon such part of the goods as shall be sufficient to respond the sum sworn to, and probable costs as above; but the defendant's property shall not be bound by the attachment until a levy is made.

6. Where the goods consist of stock, or are shewn upon affidavit to be of a perishable nature, and the agent shall not, within three days after notice of the appraisal, give security for the value, a judge, or the Prothonotary of the county in his absence 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.

## SUBSEQUENT ATTACHERS.

Party interested may contest attachment.

7. 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.

Shall apply to court on affidavit.

8. The party objecting to the attachment may apply to the Court to set it aside, which application shall be grounded on an affidavit, setting out the facts and circumstances on which the motion is made, and also shewing that his claim is just and legal.

Court may refer facts to a jury, and may make other orders.

9. Upon hearing the motion, the Court may direct a trial by jury 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 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.

Proceedings in prior suit to have no effect.

10. The proceedings between the two adverse claimants shall not be affected by any plea or other act of the defendant in the prior suit, nor by any judgment that shall be rendered therein.

Court may order security for costs, &c.

11. The Court 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 they shall think just and reasonable; and execution in the common form may be issued therefor.

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## APPEARANCE, AND JUDGMENT WHERE NO APPEARANCE.

12. The defendant may appear at any time before judgment. When defendant may appear.

13. If no appearance be entered after six months from attachment of property or service of an agent, unless special matter in bar, abatement, or further continuance be allowed, the damages may be assessed before a judge at chambers, or before the Court, and the judge or Court may, at his or their discretion, order a trial before a jury. Damages, how assessed in default of appearance.

14. If dissatisfied with the proof or the finding of the jury, the judge or Court may order a new trial or may postpone judgment for not more than six months, to allow the defendant further opportunity to defend. Judge may order new trial or postpone judgment.

## EXECUTION.

15. After judgment obtained against an absent or absconding debtor, the Court or a judge shall grant execution against any agent or trustee who has appeared and acknowledged goods or credits in his hands, for such amount and on such terms as the Court or a judge shall think fit, allowing the agent his reasonable costs and commission; such agent or trustee having had notice of the application. Execution may issue against agent by order of court.

16. No execution shall issue against an absent or absconding debtor until the plaintiff shall give security to the satisfaction of the Court or a judge or the Prothonotary, for the repayment of all moneys levied thereunder, in case the judgment should be reversed; but no such approval shall be given by the Prothonotary, unless upon affidavits verifying the sufficiency of the security. Plaintiff to give security before execution.

17. The agent of such absent or absconding debtor shall not be held liable for any goods or credits so taken out of his hands by process and judgment of law. Agent not liable for goods taken under this chapter.

## THE AGENT.

18. No summons shall issue in any case against an absent or absconding debtor to bring in an agent or trustee, until the plaintiff or his agent shall make an affidavit of his belief that the person proposed to be summoned is the agent or trustee of the defendant, or hath goods or credits of such defendant in his possession or under his control. No summons to bring in agent without affidavit.

19. The service of process on the agent shall bind all the goods and credits of the absent or absconding person then in his possession or under his control, to the amount endorsed on the writ, with one hundred and twenty dollars Service of process shall bind all goods in agent's hands.



**CHAP. 97.** for probable costs in declaration causes, and twenty-eight dollars in summary causes.

Appearance and declaration of agent.

20. 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 a judge or the Court in term or sittings.

Proviso.

Agent or trustee entitled to costs and fees in certain cases.

21. 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 or credits of the absent or absconding debtor in his possession or under his control, and shall, if required, submit to an examination upon oath satisfactory to the Court, 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.

Proceedings against agent not appearing.

22. 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 may proceed against him as for a contempt; and he shall also be liable to pay the plaintiff his costs if the Court shall so order.

#### SPECIAL BAIL.

Attachment removed by special bail.

23. When the absent or absconding debtor, his agent or trustee, shall desire to relieve the property from the attachment, he shall put in and perfect special bail to respond the judgment, and submit to such terms as the Court or a judge shall deem right for the attainment of substantial justice.

#### TRIAL AND RE-HEARING.

No trial before attachment or acknowledgment by agent.

24. The plaintiff shall not proceed in the trial of his cause against any absent or absconding debtor, unless his real estate or goods shall have been attached, or until the agent or trustee shall have admitted that he has goods or credits of such absent or absconding debtor in his possession or under his control.

Defendant re-heard within three years.

25. 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.

## FOREIGN COMPANIES.

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26. 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 process to appear shall give the Court jurisdiction over the case; and proceedings shall be had as when process to appear has been served on a defendant personally; and any person so served may, during the first Term, appear and shew that he is not an agent, and upon proof thereof he shall have judgment against the plaintiff with costs of suit.

Foreign companies doing business by agents, how sued.

27. The Court may, on sufficient cause shewn, allow time for the agent to communicate with his constituents.

Time allowed to communicate with principal.

28. 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.

Goods in hands of agent liable for amount of judgment.

29. After judgment, the agent may be examined on oath before the Court or a judge at chambers, 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, which shall be enforced against the agent personally.

Examination of agent after judgment.

30. 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 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 the sections relating to absent or absconding debtors; but the plaintiff may nevertheless proceed against the agent after judgment, as before directed.

How plaintiff may obtain security before judgment.

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Proceedings  
where property  
and no agent.

Property, how  
bound.

31. 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, summons may issue on affidavit, and attachment may be sued out, and the subsequent proceedings shall be the same as provided herein, in the case of absent or absconding debtors.

32. Nothing in the last six sections contained shall prevent the judgment from binding the property of the company, or body corporate, or from being levied and enforced by execution, or otherwise in such manner as may be conformable to law in other cases.

## CHAPTER 98.

## OF SUITS AGAINST EXECUTORS, ADMINISTRATORS, AND TRUSTEES.

Within what  
time executors,  
&c. may bring  
action for inju-  
ries to real es-  
tate of deceased.

Within what  
time actions of  
trespass, &c.  
may be brought  
against execu-  
tors, &c., for in-  
juries done by  
deceased.

Actions of debt  
maintainable  
against execu-  
tors, &c.

Legacies, &c.  
recovered by  
action at com-  
mon law.

Residuary lega-  
tees may sue  
their co-execu-  
tors.

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.

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.

3. An action of debt on simple contract may be maintained at common law against any executor or administrator.

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.

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 rateable part thereof; and any other residuary legatee shall have the like remedy against an executor.

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 neglected, in any action or suit relating to the estate.

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Executors to whom probate has not been granted, need not be named in any suit, &c.

Executors, administrators and trustees, unless where otherwise directed by the will or other instrument creating trust, are hereby authorized to invest money and funds in their hands, or under their control, in the savings bank, in provincial debentures; and the production of such 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.

Executors, &c. authorized to invest in provincial debentures, &c.

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, with such notices to parties interested as he shall think fit, as to the terms upon which the resignation of the trustee or executor should be accepted; and the Supreme Court or any two judges thereof may thereafter make 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.

Proceedings on resignation of trustees, &c.

A petition may be presented in like manner, by any person interested in the execution of a trust, asking for removal of any trustee or executor, and a like inquiry may be thereupon had, and such order passed by the Supreme Court, or any two judges thereof, as a due regard to the rights and interests of the trustee or executor, and to the parties interested in the execution of the trust, may require.

Removal of trustees, &c.

The Supreme Court, or any two judges 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 consequence of the death, unfitness or incapacity of a trustee, and on 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 two judges 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.

Appointment of new trustees.

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.

Costs, how paid, &c.

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## CHAPTER 99.

## OF SECURING THE LIBERTY OF THE SUBJECT.

Certain acts of 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.

First section not to take away common law right to *Habeas corpus*.

Supreme court to apply equitable principles.

*Habeas corpus* may be granted by supreme court or a judge thereof :

Who may give rule or order instead of writ.

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.

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.

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

on, may, in their discretion, and they are hereby em- CHAP. 99.  
 ered, (instead of granting fiat for a writ of *habeas corpus*  
*causâ* requiring the keeper of such jail or prison to  
 g the prisoner before the Court or a judge in order  
 the legality of such imprisonment may be inquired  
 and discharge, bailment or recommitment had thereon,)  
 rule of the Court, or by order of the judge in writing,  
 ed by him with his name, addition of office, and place  
 esidence, to require and direct such keeper to return  
 ie Court or to the judge whether or not such person is  
 ined in prison, together with the day and cause of his  
 ng been taken and detained.

It shall be the duty of such keeper immediately Keeper to make  
return upon re-  
ceipt of order.  
 a the receipt of such rule or order to make a true and  
 return in writing to the Court, or to such judge, of the  
 and cause of such taking and detention to the same  
 t as a return to a writ of *Habeas Corpus* would now  
 made; such return always to include a copy of the  
 ess, warrant or order, upon which the said prisoner is  
 , where the same is of a criminal nature, or upon any  
 many complaint or conviction before any justice of the  
 e; and such judge may enforce obedience to such Return, how en-  
forced.  
 r by process of contempt, in the same manner as he  
 compel proper return to be made to a writ of *Habeas*  
*pus.*

Upon return to such order, the Court or judge may Proceedings af-  
ter keeper's re-  
turn.  
 eed to examine into and decide upon the legality of  
 imprisonment, and make such order, require such veri-  
 ion, and direct such notices or further returns in  
 ect thereof as may be deemed necessary or proper for  
 purpose of justice; and may by rule of Court or by  
 r in writing signed as aforesaid, require the immediate  
 harge from prison, or may direct the bailment, of such  
 oner in such manner and for such purpose and with  
 like effect and proceeding as is now allowed upon  
*has Corpus*; such bail when ordered, to be entered  
 before any justice of the peace, specially named in  
 order, or any justice of the county or place where  
 e is no such nomination.

It shall be the duty of such keeper immediately upon Keeper to com-  
municate order  
to prisoner and  
furnish copy.  
 receipt of any rule of Court or order of a judge in rela-  
 to a prisoner in custody, to communicate the same to  
 prisoner and to give him a true copy thereof if  
 anded, and to obey the requirement of the same.

In all cases, whether under statute, or at common Court or judge  
may require pro-  
duction of pro-  
ceedings, docu-  
ments, &c., and  
inquire into  
truth of return.  
 or under the provisions of this Chapter, it shall be  
 ul for the Court or a judge to require the production of  
 ich proceedings, documents and papers relating to the  
 er in question, before whomsoever and in whose

**CHAP. 99.** 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.

Neglect or disobedience punished as a contempt.

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.

Return may be decided upon by another judge.

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.

Order not to enable keeper to discharge for other matter.

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. 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.

In case of other process.

Nothing herein to abridge civil remedy of party illegally imprisoned.

Order of exemption of keeper.

Not to conflict with Canada law.

11. Nothing herein contained shall be construed to contravene or conflict with any legislation (*intra vires*) of the Parliament of Canada.

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## CHAPTER 100.

## OF THE LIMITATION OF ACTIONS.

No action of assumpsit, trespass *quare clausum fregit*, Actions which require to be brought within six years. *nuce*, trover, replevin, debt grounded upon any lending contract without specialty, or for rent, account, or upon case, shall be brought but within six years next after cause of action.

In any action grounded upon simple contract, no A promise to take a case out of the statute must be in writing. knowledge 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 preceding section, or to deprive any party of the benefit thereof, unless such acknowledgment or promise 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 Cases of joint contractors, co-executors, &c. more joint contractors or executors or administrators of 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 act of any other of them. But nothing herein contained shall alter or take away, or lessen the effect of any judgment of any principal or interest made by any person whatsoever; and in any action to be commenced against one 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 such joint contractors, or executors or administrators, 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 awarded for the plaintiff, as to such defendant against whom he shall recover, and for the other defendants against the plaintiff.

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 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 defendant joined in such plea shall be found against the party suing the same. Issue on plea in abatement for non-joinder under this chapter, how found.

No endorsement or memorandum of any payment, Endorsements by payee not evidence. ten or made upon any promissory note, bill of exchange



**CHAP. 100.** 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.

Set-off due on simple contract within statute.

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.

Promise after full age to pay debt contracted during infancy must be in writing.

6. 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 his agent duly authorized to make such promise or ratification.

Limitation of actions of account, &c.

7. 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.

Actions which require to be brought within one year.

8. 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 against minors, &c., within what time to be brought.

9. 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 persons out of province.

10. 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 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

Case of joint debtors.

joint debtor or joint debtors who was or were out of the Province at the time the cause of action or suit accrued, or his or their return into the Province, by reason only 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. CHAP. 100.

. If in any action judgment be given for the plaintiff, the same be reversed by error, or if judgment be set aside after verdict, then the plaintiff may commence a new action within one year after such judgment reversed or set aside. When judgment reversed, &c., new action may be brought within year.

LANDS, SPECIALTIES, ETC.

1. 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 no 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 through whom he claims. Limitation of time in which to make entry or distress or bring action to recover land.

. In the construction of this Chapter the right to bring an action to recover any land or rent, shall be deemed to have first accrued at the time as hereinafter is mentioned, (that is to say):—  
 1. In 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 while entitled thereto, have been dispossessed, or discontinued such possession or receipt, then such time shall be deemed to have first accrued at the time of dispossession or discontinuance of possession, or at the last time at which any such profits or rent were or were 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 otherwise assured by any instrument (other than a will) in which some person through whom he claims; by a per- Right of action when first accrued. On dispossession. On death. Alienation.

**CHAP. 100.** son 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.

Right when first accrued in case tenant at will.

14. 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.

In case of tenant from year to year.

15. 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).

Mere entry not deemed possession.

16. 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.

Continual or other claim not to preserve right of entry, &c.

17. 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.

18. When any, or more, of several persons entitled to **CHAP. 100.**  
 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.

Possession of  
 one co-parcener,  
 &c., not to be  
 possession of the  
 others.

19. When any acknowledgment of the title of the per-  
 son entitled to any land or rent shall have been given to  
 him or his agent in writing, signed by the person in pos-  
 session 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 acknowl-  
 edgment 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.

Acknowledg-  
 ment in writing  
 given to person  
 entitled, or his  
 agent, to be  
 equivalent to  
 possession  
 or receipt of  
 rent.

20. 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 per-  
 son shall have been under any of the disabilities herein-  
 after mentioned, (that is to say,) infancy, coverture, idiot-  
 cy, lunacy, unsoundness of mind, or absence from the Pro-  
 vince, 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 afore-  
 said shall have ceased to be under any such disability, or  
 shall have died (which shall have first happened).

Persons under  
 disability of in-  
 fancy, &c., al-  
 lowed ten years  
 from termina-  
 tion of disability,  
 &c.

21. 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 any person  
 claiming through him, but within forty years next after the  
 such right shall have first accrued; although  
 disability at such time may have remained

No action, &c.,  
 shall be brought  
 after forty years  
 from action ac-  
 crued.

**CHAP. 100.** 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.

Mortgages and legacies deemed satisfied at end of twenty years, if no interest be paid or acknowledgment in writing in the meantime.

22. 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.

No arrears of dower recoverable after six years.

23. 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 rent or interest to be recovered after six years.

24. 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 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.

Limitation of time for commencement of particular actions.

25. 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 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

Actions of demise, or bonds, &c.

For damages.

Other actions.

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.

CHAP. 100.  
Actions under particular statutes exempted.

26. 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, discover, 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.

Limitation in case of infancy, lunacy, coverture, or absence from province.

27. 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 in answer to a plea of this statute.

Written acknowledgment or part payment.

Acknowledgment may be stated by way of replication.

28. 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 of any ecclesiastical or lay person, or when such way or other matter as herein

Certain claims not defeated by shewing only that the enjoyment began more than twenty years previous.

**CHAP. 100.** 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.

Indefeasible if enjoyed over forty years.

Access and use of light enjoyed for twenty years indefeasible.

Exception.

Halifax.

Terms of years, how calculated, and what acts only shall be interruption to prescription.

29. 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.

30. Each of the respective periods of years in the twenty-eighth and twenty-ninth 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.

No presumption admissible on proof of enjoyment for less period than prescribed by chapter.

31. In the several cases mentioned and provided for in sections twenty-eight and twenty-nine 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.

32. The time during which any person otherwise capable of resisting any claim to any of the matters in sections twenty-eight and twenty-nine 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 CHAP. 101. the computation of the periods hereinbefore mentioned, except only in cases where the right or claim is hereby Exception. declared to be absolute and indefeasible.

33. When any land or water upon over or from Terms of years, &c., excluded from computation. which any such way or watercourse or use of water in the twenty-eighth 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.

34. No claim for lands or rent shall be made by Her Claims of Her Majesty limited to sixty years. Majesty, but within sixty years after the right of action to recover such lands or rent shall have accrued.

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## TITLE XXIV.

### OF CERTAIN PROCEEDINGS RELATING TO REAL PROPERTY.

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#### CHAPTER 101

##### OF THE WRIT OF DOWER.

1. When the heir or other person having the freehold When widow may sue for dower. 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.
2. The writ of dower shall be in the form in the Schedule, number One, or to the like effect. Form of writ of dower.
3. Upon judgment being given for the widow, reasonable damages shall be assigned to her from the time of the demand made. Damages for withholding dower.
4. The writ of seisin thereon shall be in the form in the Schedule, number Two, or to the like effect. Form of writ of seisin.
5. The officer to whom the writ is directed shall cause Dower, how set off. the dower to be set off by five freeholders of the neighbor-



**CHAP. 101.** hood, three of whom at least shall concur, who shall be sworn before a justice of the peace, to set forth the same impartially, without favor or affection, and as conveniently as may be.

Endowment,  
where property  
indivisible.

6. Where no division can be made by metes or bounds, the widow shall be endowed in a special manner as of a third part of the rents or otherwise.

Waste not to be  
committed or  
suffered.

7. A woman endowed of lands shall not commit or suffer waste thereon, but shall maintain the buildings with the fences and appurtenances in good repair, during her term.

### SCHEDULE.

#### 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 then to shew 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 in our said Supreme Court at ———.

Issued this ——— day of ———, A. D. 18—.

G. H., Prothonotary.

J. K., Plaintiff's Attorney.

#### No. 2.

SS.

#### *Writ of Seisin.*

Victoria, by the grace of God, &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—, CHAP. 101.  
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 shewn 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.*

CHAP. 102.

## CHAPTER 102.

## OF THE PARTITION OF LANDS.

Partition may be enforced.

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.

Proceedings to be commenced by petition to supreme court.

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.

Petition, by whom maintained.

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.

Who may maintain petition.

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.

Duration of partition as between tenants for years.

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 reversioners.

Contents of petition.

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 partition, whether they have an estate of inheritance, or for life, or years, and 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.

Amendments allowed at any stage.

Petition to be filed, summons to issue and be served with copy of petition; rule to plead, &c. as if it were a declaration.

7. The petition shall be filed in the same manner as a declaration; and a summons to appear and answer thereto shall be signed by the Prothonotary; and a copy thereof with a copy of such petition, accompanied by a rule to plead and the usual notices, shall be served on each of the

parties named in the petition as interested in the premises, CHAP. 102.  
if they shall be found within the Province, the like number  
of days as required in ordinary writs.

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.

Proceedings,  
where some  
parties are ab-  
sent, &c.

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.

Where a party  
fails to appear,  
court may order  
further notice.

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.

Proceedings  
where party out  
of province has  
not had oppor-  
tunity of appear-  
ing.

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.

Guardians may  
be appointed.

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 plead-  
ings 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.

Defendants may  
appear jointly or  
separately;  
pleadings, &c.,  
to be as in other  
cases.

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 peti-  
tioner may in the same replication plead over in answer  
to such plea any other matter in like manner as he might

Replication  
where a party's  
right to appear  
and defend is  
contested.

## CHAP. 102.

Commissioners' returns to be confirmed by Court, filed and registered.

Return may be set aside and new proceedings had.

Final judgment upon whom conclusive.

Part owner absent from Province may apply within three years for new partition.

Court may order a new partition.

Commissioners' duty on such new partition.

Improvements, how considered in new partition.

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.

28. The Court for any sufficient reason shewn 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.

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.

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.

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.

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, estimating 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.

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 CHAP. 102.  
the usual form.

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 land 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, who claims to hold premises in severalty, not bound by judgment.

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.

Person not appearing, but claiming share assigned to part owner, bound by partition, but may have action for share.

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.

Action in such case, how and against whom brought.

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.

Proceedings where two persons claim same share before division.

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

Rights of party not appearing where share was not known or allowed, how far affected by partition judgment.

**CHAP. 102.** 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.

Redress in such case, how and against whom obtained.

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.

Rights of heir or devisee where, after partition, it shall appear that ancestor or testator died before partition.

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.

Remedy where party evicted by person having paramount title.

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.

Lien by mortgage, &c., how affected 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. CHAP. 102.

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. Titles under judgment in partition, how considered.

47. All proceedings connected with the partition of lands under this Chapter may be taken either at common law or in equity; and all necessary rules and orders thereunder may be granted by the Judge in Equity, 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. Proceedings, how taken, and before whom; exception; appeal.

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. Order of a single judge liable to be rescinded or altered.

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 accepting such estate or parcel thereof, the Judge in Equity or any other 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. 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.

Net proceeds divided among parties interested. Judge may direct deed to be executed, passing title.



CHAP. 103.

## CHAPTER 103.

## OF THE SALE OF LANDS UNDER FORECLOSURE OF MORTGAGE.

In actions for money secured by mortgage, defendant may pay into court and have a reconveyance.

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.

Proceedings where one or more of mortgagors absent may be as in cases of absent debtors.

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 hereinafter 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 declaration is returnable, as is necessary in ordinary cases of proceeding against absent or absconding debtors. In cases 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 CHAP. 104.  
the county wherein the lands lie.

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 should be reversed on such re-hearing.

Re-hearing provided where defendant is an absent debtor.

6. The deed shall be executed and delivered by the Sheriff to the purchaser, 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.

Sheriff's deed, its effect.

Writ of possession may issue.

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.

Proceeds of sale, how applied.

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.

Powers of Supreme Court to adjust equities.

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.

One judge to have power of court.  
Exception.

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## CHAPTER 104.

### OF THE SALE OF LANDS UNDER EXECUTION.

1. Any judgment recovered in the Supreme Court shall bind the real estate of the debtor from the time such Judgment 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 of part of any lands or hereditaments charged therewith shall not affect the validity of the judgment 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

Judgments shall bind lands.

Partial release.

Proviso.

**CHAP. 104.** levied upon until one year after the registry of the judgment as aforesaid.

Interest of mortgagor may be levied on, &c.

2. 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.

3. 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 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.

Effect of certificate.

And such certificate shall be of the like effect, as a release executed by the mortgagee, or his representatives or assigns, to the mortgagor, his heirs, executors, administrators or assigns.

Mortgagee may buy at such sale.

4. Any mortgagee of lands and tenements so sold, or the heirs or assigns of such mortgagee, may be the purchaser at such sale, and shall acquire the same estate interest and rights thereby as any other purchaser.

5. The interest of the party beneficially interested in lands held in trust for him, may be taken in execution for the payment of his debts in the same manner as if he were seised or possessed of such lands.

## CHAP. 104.

Interest of cestui que trust may be sold under execution.

6. Execution as against lands may issue at any time within six years from the signing of the judgment, with out a *scire facias* or leave of the Court.

Execution within six years after judgment.

7. The plaintiff may order execution to be levied on the whole or any portion of the real estate lying within any county or district where the judgment is registered as provided in the first section.

Plaintiff may levy on whole or part of lands in county.

8. Where a judgment has been so registered for the period of one year, and no levy has been made on the real estate bound thereby, any judgment creditor whose judgment has been subsequently registered, may, by a written notice, require the prior judgment creditor to levy on the real estate within three months.

After a year subsequent judgment creditor may compel levy.

9. If the prior judgment creditor shall not levy, the party giving the notice shall acquire a preference over the judgment creditor to whom such notice has been given.

If no levy, prior creditor loses preference.

10. The Sheriff upon receiving such execution, shall, at the expiration of the one year, levy on such lands without appraisal, and 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 any newspaper 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 against the defendant, the time and place fixed for such sale, and having appended thereto the names of the Sheriff and the attorney of the plaintiff.

Lands to be levied on without appraisal, and advertised thirty days in *Gazette, &c.*

Contents of advertisement.

11. The Sheriff, after causing copies of such advertisement to be 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.

After twenty days advertisement by hand-bills, sheriff shall sell to highest bidder.

12. If the defendant, by notice in writing delivered to the Sheriff at least ten days previously to the sale, require 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.

Defendant may by notice require any particular part of land to be sold first.

13. The Sheriff shall deliver to the purchaser a deed of such lands, which shall be sufficient to convey to the

Sheriff's deed, its effect.

**CHAP. 105.** purchaser all the interest of the defendant in the lands therein described subject to prior encumbrances.

Presumptive evidence of transfer of defendant's title.

14. The Sheriff's deed shall be presumptive evidence of the defendant's title having been thereby conveyed to the purchaser.

Purchaser shall become landlord of tenants.

15. Where the lands so conveyed shall be in the possession of the tenants of the defendant, the purchaser shall become the landlord, and shall have the like rights and remedies against the tenants as the defendant would have had, and shall be entitled to all rents accruing after such purchase.

Surplus proceeds of sale returned by sheriff, subject to order of court.

16. 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.

Provision as to titles prior to 1841.

17. 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.

## CHAPTER 105.

### OF TENANCIES AND OF FORCIBLE ENTRY AND DETAINER.

Notice to quit, what to be sufficient.

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.

Warrants issued in case of forcible entry and detainer, and party held to bail.

2. 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,

y 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 a Supreme Court in the county, and to pay the costs of a proceedings if adjudged against him; and in case he all not find security, the cause shall notwithstanding proceed, and such complaint and all proceedings before such justices shall be forthwith fyled by them in the Supreme Court. CHAP. 106.

3. No such warrant shall issue where the party complained of or the person under whom he claims has been quiet possession for three years next before the filing of a complaint; unless in cases of tenancy, where the same is terminated. In what case warrant may not issue.  
Exception.

4. The plaintiff shall fyle and serve his complaint, briefly stated; and the defendant shall, within fourteen days thereafter, fyle 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; and the Court may, if they think fit, order that the cause shall be tried, or the rent or damages be assessed by a jury. Complaint to be summarily tried.  
Possession, when to be given.  
Court may award damages or order same to be assessed by jury.

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## CHAPTER 106.

### 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 re-vesting in the Crown the town lands that have been granted, but which shall have been forfeited to the Crown in whole or in part for non-compliance with 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 the door of the court house, and in at least five other public places in the county, Notice of inquests, how given.

**CHAP. 106.** during the period of three months before the commencement of the term; and if any person be living on the lands, or in actual possession and cultivation of the same, or any part thereof, a copy of the notice shall also be delivered to him.

Penalty in case tenant neglects to inform landlord of notice, how recovered.

3. 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.

Proceedings in case of non-appearance.

4. Upon proof of such notice, if there be no appearance and plea by a party who shall be entitled to traverse the inquest, the Court, upon hearing evidence which shall be taken in writing by the judge in the usual manner and filed with the Prothonotary, and being satisfied of the non-fulfilment of the conditions of the grant, shall give judgment, re-vesting the lands in whole or in part in the Crown; whereupon the usual costs shall be taxed, and being certified by the judge, shall be paid out of the Provincial Treasury.

Costs, how paid, &c.

Proceedings in case of appearance and plea.

Costs.

5. 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.

Inquest may include several lots, but trials shall be separate.

6. Any number of lots within the county may be included in the same inquest, but the traverses and trials shall be separate.

Where grant includes several lots, &c., forfeiture of each, how incurred.

7. 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.

Plea, nature of.

8. 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.

9. 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.

CHAP. 107.

## CHAPTER 107.

## OF DISTRESS FOR RENT.

Where any goods are distrained for rent reserved due upon any lease or contract, and the tenant or owner of the goods shall not within five days next after distress taken, and notice thereof with the cause of distress served upon him, or left at the most conspicuous place on the premises charged with such rent, replevy the goods with security to be given to the Sheriff; the landlord, 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.

Goods distrained to be appraised and sold within five days after notice if not replevied.

After the appraisement the landlord shall sell the goods so distrained for the best price to be gotten therefor, towards payment of the rent due and expenses incurred; and the surplus, if any, in the hands of the officer for the owner's use.

Goods to be sold, and after rent paid, surplus to remain for owner.

Sheaves or cocks of grain, grain loose or in the straw, hay in a barn or upon a hovel, stack or rick, or upon any land charged with such rent, may be locked up or confined 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, the same shall not be removed out of the place where found and seized by the distrainer, to the use of the owner, before such sale.

Grain in the straw, hay in a barn, &c., how distrained.

Upon any pound-breach and rescue of goods distrained for rent, the person aggrieved thereby may recover 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.

In case any distress and sale be made by any person in arrear, 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, or their executors or administrators, the value of the goods so distrained, and such further damages as the jury shall award.

Remedy in case of a distress for rent, where none is in arrear.

Where any distress shall be made for any kind of rent justly due, and any irregularity or unlawful act shall afterwards be 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; but the person aggrieved by such unlawful act or

Subsequent irregularity not to render distress unlawful.

Remedy of party aggrieved.



**CHAP. 107.** 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.

Goods not liable to be removed under execution till rent paid, but not to exceed one year's amount, &c.

7. No goods being upon any messuage or tenement leased shall be liable to be taken by virtue of any execution, unless the party at whose suit the 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 rateable part thereof up to the levy of the 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 execution creditor may proceed to execute his judgment as in other cases; and the Sheriff, his deputy or other officer is required to levy and pay to the execution creditor, as well the money so paid for rent as the execution money.

Goods fraudulently removed to avoid distress may, unless previously sold in good faith, be seized within twenty-one days.

8. 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.

Rent reserved upon lease for life recovered as in other cases.

9. 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.

Rent distrained for within six months after determination of lease in certain cases.

10. 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 during the possession of the tenant from whom such arrears are due.

Executors, &c., may distrain for rent due deceased, and in what cases.

11. Executors or administrators of a landlord may 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 CHAP. 108.  
 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.

12. 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,  
 tops, 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.

13. In case there is no barn or proper place on the Such distress  
how kept where  
no barn, &c.,  
upon premises.  
 premises for receiving the same, then he may cause the  
 same to be placed in any barn or proper place to be pro-  
 cured as near as may be to the premises, and in convenient  
 time shall appraise and dispose of the same towards satis-  
 faction 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.

14. Notice of the place where the goods so distrained Notice of place  
of such deposit,  
when and how  
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.

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## TITLE XXV.

### OF PROVISIONS AS TO CERTAIN SPECIAL CASES.

#### CHAPTER 108.

##### OF TRUSTS AND TRUSTEES.

1. The several words hereinafter named are herein Definition of  
terms.  
 used and applied as follows respectively, that is to say:

The word "seised" shall be applicable to any vested Seised.  
 estate for life, or of a greater description, and shall extend  
 to estates at law or in equity, in possession or in expect-  
 ancy, in any lands.

The word "possessed" shall be applicable to any vested Possessed.  
 estate less than a life estate at law, or in equity, in posses-  
 sion, or in expectancy, in any lands.

The words "trust" and "trustee" shall extend to and Trust.  
Trustee.  
 include implied and constructive trusts, and shall extend  
 to and include cases where the trustee has some bene-  
 ficial estate or interest in the subject of the trust.

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Supreme court,  
court, &c.

Construction of  
words not de-  
fined.

In case of infant  
trustee, court  
may make  
order.

If trustee out  
of jurisdiction,  
court may make  
such order.

If joint trustee  
is out of juris-  
diction.

In case of doubt  
as to which  
trustee was sur-  
vivor.

In case it is not  
known whether  
trustee last  
seised is living  
or dead.

The terms "the Supreme Court," and "the Court," shall mean the Court of the Equity Judge, or the Judge in Equity, or the Court or Judge exercising occasionally the functions of that Court, except when otherwise expressed or clearly indicated.

All other words not hereinbefore defined, but herein-after 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."

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.

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.

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 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.

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.

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. CHAP. 108.

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 died intestate without heir, or heir or devisee not known.

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 trustee will not convey to person entitled.

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 thereof. In case land subject to trust converted into money by operation of laws relating to railways.

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.

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. Effect of conveyance.

Persons upon whose application orders may be made.

**CHAP. 108.** 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.

**Motion thereon.** 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.

May apply by petition and affidavit.

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.

Proceedings upon hearing petition, &c.

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.

Costs.

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.

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 allegation 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.

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Court may direct re-conveyance and payment of costs of order improperly obtained.

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.

Proceedings when process cannot be served on trustee.

Proviso.

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 same to another.

Assignment of personal property.

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 at 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

Acts done under power of attorney.

**CHAP. 108.** 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.

Distribution of assets by executor or administrator.

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.

Liability of trustees limited to moneys 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."

25. Under an order to be obtained from the Court of **CHAP. 108.**  
 Equity upon grounds laid to the satisfaction of the Court, Trustees, guardians, &c., may mortgage real estate for repairs.  
 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. Court may apportion charge for repairs.  
 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.

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. On application to master he may order the service of application or dismissal with costs.  
Orders, how enforced.

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 the same respectively shall be made, or in such manner as the Court shall think proper. Court may order costs to be paid out of proceeds of lands.

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 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



**CHAP. 108.** 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.

Where appointment not 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 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 Peace 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.

## CHAPTER 109.

## OF ARBITRATION.

power of arbitrators, appointed under a rule or containing an agreement that it should be of the Supreme Court, shall be irrevocable, Court or a judge shall otherwise order; and the judge may enlarge the time for making an award.

Power of arbitrators, when irrevocable: judge may enlarge time for award.

any case referred to arbitration, whether by rule or otherwise, the arbitrators shall have power to enjoin the attendance of witnesses before them or place therein named; and any person on such subpoena shall have been served, and who has been tendered such fees for travel and attendance 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.

Attendance of witnesses, how enforced.

Punishment for disobedience of subpoenas.

any person shall be compelled to produce, under any subpoena, any writing or document that he would not be compelled to produce at a trial, nor to attend on more than two consecutive days.

Production of documents: witness need not attend more than two days.

any arbitrators so appointed may administer oaths to witnesses.

Arbitrators may swear witnesses.

any arbitrators are appointed under a submission containing any agreement that it shall be made a rule of Court, any justice of the peace may administer oaths to witnesses in the presence of one or more of the arbitrators.

Justices may administer oaths when arbitrator not appointed under rule of court.

any matter may be made to appear, at any time after the issuing of a subpoena, 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 course of law, it shall be lawful for such Court or judge, upon such application, if they or he think fit, to decide such matter in any manner, or to order that such matter either wholly or in part, be referred to an arbitrator or arbitrators, to be named by the parties, upon such terms as to costs and expenses, as such Court or judge shall think reasonable, and the decision or order of such Court or judge, or of any arbitrator or arbitrators, shall be enforceable by the same process as the finding of a jury upon the facts in issue: and in case the parties or either of

Power of court or judge, upon application, to direct arbitration before trial.

**CHAP. 109.** them shall not, within the time specified in the order, appoint arbitrators, it shall be lawful for the Court or a judge to appoint one or more arbitrators, to whom the cause shall be referred.

Special case may be stated and question of fact tried.

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.

Arbitrator may state special case.

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.

Power of judge to direct arbitration at time of trial when issue of fact left to his decision.

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 matters for re-

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.

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consideration to  
arbitrator.

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.

Application to  
set aside award.

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.

Enforcing of  
awards within  
period for set-  
ting them aside.

14. Where a rule *nisi* is obtained to set aside an award, the several objections thereto intended to be insisted on at the time of moving to make such rule absolute shall be stated in the rule to show cause.

Objections to  
award to be  
stated in rule  
*nisi*.

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: ~~pro-~~ ~~at~~ any such rule or order may at any time ~~be~~ charged or varied as justice may require.

If action com-  
menced by one  
party after all  
have agreed to  
arbitration,  
court or judge  
may stay pro-  
ceedings.

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On failure of parties to appoint, the judge may appoint an arbitrator, umpire, or third arbitrator.

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 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.

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When reference is to two arbitrators, they may

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.

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.

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.

21. Every agreement or submission to arbitration by consent, whether by deed or instrument in writing not

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appoint an umpire.

Award to be made in three months, unless parties or court enlarge the time.

Rule to deliver possession of land, pursuant to award, to be enforced as a judgment in ejectment.

Submission in writing may be made rule of

**CHAP. 110.** 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.

court, unless a contrary intention appear.

Obedience to an award, how enforced.

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.

Fees to arbitrators to be allowed on taxation of costs.

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.



## CHAPTER 110.

### OF PARTNERSHIPS.

#### COMPULSORY ARBITRATIONS.

When co-partnership terminated, proceedings in supreme court.

1. 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.

Copy of petition, &c., to be served.

2. A copy of the petition shall be served on the partner complained of at the time of the service of the summons.

Court may order arbitrators.

3. 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 appoint arbitrators where parties neglect.

4. 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.

Arbitrators shall appoint a third person.

5. 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 to be sworn: form of oath.

6. 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.

He, A. B., C. D., and E. F., do hereby solemnly swear **CHAP. 110.**  
 justly and fairly to settle the partnership accounts and  
 claims of G. H. and J. L. to the best of our knowledge  
 and ability.

worn at \_\_\_\_\_ before me this \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_.

G. H., J. P.

A. B.

C. D.

E. F.

The arbitrators shall then order the production of 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 affairs 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.

Witnesses shall be summoned to attend before the arbitrators 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.

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.

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 parties, and in such manner as the arbitrators or any two of them shall direct; and the Court shall enforce such judgment by attachment or otherwise.

Execution to issue; costs and expenses, from whom and how recoverable.

Neither of the partners shall after such adjudication commence any proceedings in equity 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 at term.

Judgment when entered shall be final.



CHAP. 110.

## LIMITED PARTNERSHIPS.

Limited partnerships, how formed. Objects.

12. 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.

Certificates and preliminary proceedings in case of limited partnerships.

13. 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 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.

Certificates to be verified under oath.

14. 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 amounts specified in the certificate to have been contributed by each of the special partners to the common stock, been actually and in good faith paid in cash; and no partnership shall be deemed to have been formed unless a certificate shall have been made, acknowledged, and recorded, and an affidavit filed as above directed; if any false statement be made in such certificate or affidavit, all persons interested in such partnership shall be deemed as general partners.

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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 the district, and by handbills posted up in some public places in the township in which the business of the partnership is to be carried on. If such publication be not so made, the partnership shall be deemed general. Affidavits 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 handbills, may be filed with the registrar with whom the certificate of the partnership shall have been filed, and shall be evidence thereof.

Publication in newspapers and by handbills.

Every renewal or continuance of any such partnership beyond the time originally fixed for its duration shall be deemed a general partnership, unless it be renewed, acknowledged and recorded, and an affidavit of a special partner made and filed, and notice in the manner herein required for its original formation; every such partnership otherwise renewed or continued shall be deemed a general partnership.

Renewals of limited partnerships, how provided for.

Every alteration made in the names of the partners, the nature of the business, or the capital or shares thereof, or any other matter specified in the original certificate, shall be deemed a dissolution of the partnership; and every 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.

Alterations in business to constitute partnership general unless in case of renewal.

The business of the partnership shall be conducted as if it were a firm in the names of the general partners only, without the addition of the word company or any other special term; and any special partner whose name shall not be used in such firm with his privity, shall be deemed a general partner.

Limited partnership, under what terms conducted.

Actions and suits at law and in equity in relation to the business of the partnership may be brought and defended by and against the general partners, as if there were no special partners.

Actions to be in names of general partners.

## CHAP. 110.

Regulations as to capital stock and distribution of profits.

20. 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 not transact business for partnership.

21. 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 be liable to account to each other and to the special partners for their management of the concern, both in law and in equity, as other partners now are.

Fraud in special partnerships, how punished.

22. 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, and shall also be liable to an indictment for a misdemeanor punishable by fine or imprisonment, or both, at the discretion of the Court.

Preferential assignments by partners to be held void against creditors.

23. 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.

Creditors' claims preferred to those of special partners in case of insolvency.

24. 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.

Dissolution, how effected.

25. No dissolution of such partnership by the acts of the parties shall take place previous to the time specified

the certificate of its formation or in the certificate of its dissolution, until a notice of such dissolution shall have been made 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 newspaper printed in Halifax, and by handbills in each of the counties where the partnership may have been carried on as of business. CHAP. 111.

#### SURETIES TO OR FOR FIRMS.

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 parties be 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 promise, or otherwise. Sureties to or for firms not answerable on change in partnership.

Nothing in this Chapter shall be construed to conflict with any legislation (*intra vires*) of the Parliament of the Dominion of Canada. Not to conflict with Canada law.

## CHAPTER 111.

### OF THE PROTECTION OF JUSTICES OF THE PEACE.

Every action against a justice of the peace for any wrong done in the execution of his office with respect to a matter within his jurisdiction, shall be an action on the declaration and it shall be expressly alleged in the declaration that the act was done maliciously and without reasonable probable cause; and, if upon the trial the plaintiff fail to prove such allegation, judgment shall be given for the defendant. Actions against justices to be actions on the case; allegations of malice, &c., necessary.

If the action be brought for an act done in a matter in which the justice has no jurisdiction, or where he has exceeded his jurisdiction, the party injured thereby or by any act of his shall be entitled to recover damages. Malice, &c., when need not be alleged; action in such case when only to be brought.

**CHAP. 111.** 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.

Cases in which no action shall lie against justice for anything done under warrant.

3. 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.

Justice issuing warrant not liable where another justice makes illegal conviction.

4. 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.

Justice granting warrant of distress for a rate not liable for deficiency in rate.

5. 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 against justice for granting warrant upon a defective conviction, &c., confirmed on appeal.

6. 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.

Action brought when forbidden may be quashed.

7. 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.

Month's notice to be given a justice before action brought; contents of notice; limitation of action.

8. 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 venue in every such action shall be laid 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. CHAP. 111.

9. 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. Justice may tender amends or pay money into court: proceedings in such case.

10. 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 laid as venue in the margin of the declaration, the plaintiff shall be non-suit or the jury shall give a verdict for the defendant. Proof required on part of plaintiff.

11. 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 If plaintiff on trial is proved guilty of offence of which he was convicted, and has suffered no undue punishment, he shall recover nominal damages only.

**CHAP. 112.** 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.

Cases where plaintiff on recovery of damages shall have full costs.

12. 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 declaration 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.

*Proceedings to compel Justice to perform duty, &c.*

Supreme court may compel justice to do act relating to his office; proceedings in such case.

13. Where a justice 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 shown against it, the Court may make the rule absolute, with or without costs, as they may see meet; and the justice, 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 for having obeyed such rule.

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## CHAPTER 112.

### OF THE PROTECTION OF CONSTABLES.

Demand of perusal and copy of warrant to be served upon constable, &c., before action brought.

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 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.

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. CHAP. 113.

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. (limitation of action.)

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## CHAPTER 113.

### OF COMPENSATION TO THE FAMILIES OF PERSONS KILLED BY ACCIDENT.

1. Whosoever 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. 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.

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. Such action shall be by personal representative for benefit of relatives of deceased. Measure and disposal of damages.

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. Only one action, and within twelve months.

4. In every such action the plaintiff on the record shall, the writ of summons, deliver to the defendant or his full particulars of the person or persons for and Plaintiff shall deliver certain particulars with summons.



**CHAP. 114.** 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.

Meanings 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.

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## TITLE XXVI.

### CHAPTER 114.

#### OF COSTS AND FEES.

Fees to be as in  
Schedule.

1. Fees for the services mentioned in the Schedule to this Chapter shall be as therein prescribed.

Penalty for  
taking excessive  
fees.

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.

Actions for pen-  
alties, where  
brought; limi-  
tation.

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.

Prothonotary to  
furnish bill of  
items, when  
required.

4. Every prothonotary 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.

#### 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.

entering diploma,	\$4 00	CHAP. 114.
commission for Sheriff,	2 00	
“ Coroner,	5 00	
“ Notary and Tabellion Public,	10 00	
copies of any papers in the Secretary’s office,	0 10	
folios,	0 10	
binding books or documents in the Secretary’s office,	0 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	

*Prothonotary’s Fees.*

action, filing oath, warrant or præcipe, and signing every writ, execution, or other process,	0 50
every writ, and entering return,	0 20
declaration and all other pleadings,	0 10
appearance,	0 30
and filing every rule of court,	0 10
every rule when given by prothonotary,	0 10
forming and striking a special jury, and for copies of the lists furnished to the respective parties and all other services connected therewith,	2 00
cause on docket, including attendance at chambers,	0 30
and impannelling jury,	0 20
each witness or constable,	0 10
and entering verdict,	0 20
judgment,	0 40
prothonotary at Halifax, for the entry of a judgment not belonging to the Supreme Court at Halifax, and for the transcript thereof,	0 50
non-prosecution or discontinuance,	0 10
copies of all papers, per folio,	0 10
prohibitory writ in a cause filed in court,	0 06
affidavit in court,	0 20
deposition,	0 10
copies of records,	0 10
every default,	0 10
and taking every recognizance,	0 20
every non-suit,	0 10
and signing every subpoena,	0 20
copy,	0 10
costs of every cause,	0 20

<b>CHAP. 114.</b> Filing the roll in every cause,	\$0 20
Taxing bill of costs,	0 20
Copy of docket and certificate of judgment,	0 50
Certificate of discharge of judgment,	0 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,	0 50
For all other services, including final judgment, when not tried by a jury,	0 50
For every alias summary writ and præcipe,	0 40

*In Sub-summary suits.*

Signing and sealing writ,	0 20
Signing judgment,	0 30
Every subpoena or ticket,	0 10

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No commission shall be allowed or deducted from  
money paid into court under any rule or plea.

*Commissioner's Fees.*

For administering oath,	0 20
For marking writ,	0 20
Taking depositions of witnesses, each witness,	1 00
And for taking depositions, per folio,	0 10
Travelling fees, when necessary, per mile,	0 05

*Sheriff's Fees.*

Serving summons and making return thereof,	0 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, Returning every execution where the same has not been served,	1 00
Serving every writ of possession and making return thereof,	0 30
Travel per mile from the place of residence of the Sheriff to the place where he shall serve a writ,	3 00
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.	0 10
Every bail bond,	0 00
Summoning a jury in each cause,	0 50
Executing writ of inquiry, summoning jury, and making return,	2 00

returning every special jury, in execution or attachment where a sale shall take place extended on personal property, sale and payment of the money to the party or his attor- ney, as follows:	\$3 00	CHAP. 114.
or any sum not exceeding \$200, five cents in the dollar.		
from \$200 to \$400, four cents in the dollar.		
or 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.		
or making inventory of goods attached, such rea- sonable fees as shall be taxed by the court out of which the writ shall have issued.		
or certifying copy of attachment levied on real estate and making and delivering to the regis- trar of deeds copy of the appraisement of the real estate,	1 00	
in 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 <i>habeas corpus</i> ,	1 00	
attending prisoner before judge on any special occasion,	0 75	
or every member returned duly elected to serve in general assembly, to be paid out of the trea- sury 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 ses- sions.		

*Appraiser's Fees.*

For appraising goods or real estate taken under attachment, each appraiser,	0 50
When property is extensive and complicated, for each day actually employed, each appraiser,	0 70

*Juror's Fees.*

Petit and special jurors, per day	1 00
Travel per mile from place of residence to court house,	0 10

*Witness' Fees.*

per day,	0 50
coming and going,	0 05

CHAP. 114. To be the same in every court.  
Plaintiff or defendant no witness fees except where called by the opposite party.

*Orier's Fees.*

For every default on non-suit,	\$0 07
“ calling jury in each cause,	0 10
“ every verdict,	0 07
“ swearing every witness,	0 05
“ discharging a party by proclamation,	0 10
On every bill of costs taxed in the country,	0 10
“ “ “ Halifax,	0 20

*Constable's Fees in Supreme Court.*

Attending jury in each cause,	0 20
Serving every warrant or summons,	0 20
Summoning a jury by warrant from coroner, and attendance per day,	0 50
Travel per mile the same as Sheriff.	

*Coroner's Fees.*

For every inquisition, including \$2.40 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 court of sessions, to be a county charge.	
The same fees as a Sheriff in cases where he discharges the duty of a Sheriff.	

*Arbitrator's Fees under a rule of Court.*

Reasonable fees to be taxed.

*Medical Practitioner's Fees.*

For attendance and evidence before coroner,	5 00
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ATTORNEY'S FEES.

*In all Causes under eighty dollars, and Appeal Causes.*

For writ, præcipe, affidavit and declaration,	3 50
On final judgment,	3 50
Subpcena and præcipe,	0 50
Execution,	1 20
Brief and copy, when not tried by a jury, not less than \$1.50, nor more than 3.00.	
“ when tried by a jury, not more than \$15.00, at the discretion of the judge.	

appeal causes the party succeeding in the court above to be entitled to have his costs from the court below taxed on his bill when taxed, and the judge or court below to send up with the appeal papers the costs on des. CHAP. 114.

*In all other Causes.*

eng fee,	\$2 00
ter,	1 00
it of attorney,	0 30
e,	0 30
writ, summons, or other original process,	1 00
	0 50
aining declaration, additional,	1 00
f same,	0 50
lars of demand, per folio,	0 20
per folio,	0 10
se,	1 00
of trial, notice to produce, and other neces-	0 75
y notices, in a cause,	0 25
each,	1 00
	0 50
it to hold to bail,	0 50
g appearance,	0 50
nd copies, not less than \$1.50, nor more than	
.00, to be taxed by the court,	
ontinuanee,	0 20
iscontinuanee or retraxit,	0 20
ing, balloting, or striking special jury,	2 00
ng, taking every inquisition before Sheriff,	2 00
bill of costs,	0 50
ing to get same taxed,	0 50
g a demurrer, special verdict, motion for new	
al, or other special motion,	2 00
se,	4 00
s and copies, each,	0 20
ubpœna,	0 40
icket,	0 50
per mile for service, the same as to Sheriff.	
ing the examination of every witness taken	
ore a judge or commissioner,	2 50
necessary attendance before a judge,	1 50
execution, <i>habeas corpus</i> , writ of error and	
it of inquiry or revivor, each,	1 20
g issue, per folio,	0 10
ng same, per folio,	0 10
g record, per folio,	0 10
ng same, per folio,	0 10

CHAP. 114. All other drafting necessary to be done by an attorney in the conducting of a cause, per folio, \$0 20  
 All necessary engrossing, per folio, 0 10  
 All necessary postages.  
 All fees paid registrars of deeds for certified copies of papers necessary for the trial.  
 Amount paid for plans or copies of plans to be used on trial or argument, in the discretion of the judge.

## COUNSEL FEES.

In summary, sub-summary, or appeal causes, when tried before a jury, to be taxed by the Court, not to exceed twenty dollars.

In all other causes after appearance and plea, in arguments for new trials, or on demurrer, or in special cases submitted, or in bills taxed between attorney and client, to be taxed at the discretion of the judge, not to exceed one hundred dollars; but not to be allowed in cases of default, nor except in cases of demurrer, unless there shall have been a plea pleaded.

## FEES IN EQUITABLE SUITS.

The same fees as now allowed in the Supreme Court, with the following additions :

*Attorney's Fees.*

Where the writ exceeds five folios the Court or a judge may allow for the excess, being not more in any case than twenty folios in all, for each folio. 0 20  
 Counsel fee for examining each equitable pleading, 2 50  
 Counsel fee in all equitable suits, to be taxed in any stage of the cause, at the discretion of the judge, but not to exceed 20 00  
 Drawing every brief deemed by the judge necessary in an equitable suit, from \$4 to \$20, at his discretion.  
 Every deed in foreclosure, and other equitable suit 5 00  
 Every attendance before a master, shewn to have been necessary by affidavit, and approved of by the judge, 1 50  
 All necessary expenses incurred in serving defendants out of the Province, in advertising, and for postages.  
 For attending registrar of deeds for certificate of title, and any general rule of court or order in a cause in equity or at law, 2 50

	CHAP. 114.
For attending the examination of every witness before the Judge or an examiner in Equity suits to be afterwards used in evidence,	\$2 50
When witnesses shall be examined by consent, by affidavits drawn by the solicitors, for such depositions per folio,	0 10
And for procuring attendance of each witness, taking his statement, and procuring him to be sworn,	1 00
For every order for examination of witness before examiner,	0 75
For copy for service,	0 50
For attending to procure the same,	1 50
For service of the same,	0 75

*Master's Fees.*

For every attendance on a reference, shewn to have been necessary by affidavit, and approved of by the judge,	1 50
For every report,	1 50
And for every folio beyond six folios, but not to exceed twenty folios in all,	0 20
For administering every oath and signing jurat,	0 40
For every necessary travel, going and returning, per mile,	0 05
For 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.

For the Judge Ordinary, for each day he shall actually attend,	4 00
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*Advocate and Proctor's Fees.*

Retaining fee for counsel,	5 00
For copy,	1 50
For draft of libel or other pleading, per folio,	0 20
For grossing same, per folio,	0 10
For entering appearance,	0 75
For every subpoena, citation or other writ,	1 00
For copies for service, each,	0 30
For drawing affidavit of service of subpoena, citation, or other process or proceeding,	0 40
For every petition necessary in conducting a cause,	0 75
For every order,	0 75
For counsel fee on making or defending every special motion, not to exceed	5 00
For writing brief in every cause, per folio,	0 20



<b>CHAP. 114.</b> Counsel fee for examining and signing each pleading,	\$2 33
Draft of interrogatories, per folio,	0 20
Engrossing ditto,	0 10
Counsel fee on hearing or argument, not to exceed	14 00
Making up bill of costs,	0 75
Serving every subpoena, or other writ or order,	0 70
Travel, per mile, from the residence of the party making service to the place of service,	0 05
Every necessary attendance on the registrar,	1 50
Draft of decree, per folio,	0 10
Engrossing ditto,	0 10

*Registrar's Fees.*

Entering and filing every bill,	0 50
Entering and filing every other pleading,	0 30
Filing all other papers, each,	0 10
Signing and sealing every writ, and certifying copies,	0 50
Every search,	0 20
Copies of all papers, per folio,	0 10
Drawing and signing every rule or order,	0 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,	0 40
Every order not herein specially provided for,	0 40
For the probate of a will or letters of administra- tion 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 appraisement and order for the same,	0 50
For every subpoena, attachment, execution, or other process not otherwise provided for, including order for the same,	0 25

<i>ad colligendum,</i>	\$2 00	CHAP. 114.
deed or decree in ordinary cases of granting powers to sell, mortgage or lease real estate, settling accounts of distribution, &c.,	2 00	
deed or decree for probate of a will or codicil, orders of administration, or granting license to sell, mortgage or lease real estate, passing ac- counts of distribution, &c., where there is a test,	6 00	
setting appeal with statement of decision, testimony in writing where there is a con- tract, per folio,	5 00	
contract for appraisers to divide real estate, on peo- ple of parties,	0 20	
order <i>potestatem</i> to take deposition of witnesses, order therefor,	1 00	
appointing and allowing guardians to minors, and order therefor,	1 00	
deed administered by him,	3 00	
deed administered by him,	0 20	
printing and taxing costs,	0 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
printing every paper, of will and letters of administration and order of order therefor, where the estate is under \$800,	0 07
where estate is above \$800 and does not exceed \$1000, and entry of order,	3 50
where estate is above \$800, and entry of order therefor,	4 00
where estate is above \$4000, and entry of order therefor,	9 50
entry of guardianship or <i>ad colligendum</i> , and entry of order,	2 00
entry of will and probate, per folio,	0 10
posting bond in all necessary cases,	0 80
posting citation and seal,	0 40
copy thereof,	0 20
posting necessary affidavits, each,	0 20
posting every warrant and seal,	0 50
posting every certificate of licence to sell real estate,	1 00
posting copies of papers, per folio,	0 10
posting every certificate and <i>dedimus potestatem</i> ,	1 00
posting every decree in registry book, and of every order not specially provided for, per folio,	0 10
posting every subpoena or inspection of documents,	0 20
posting every subpoena and seal,	0 40

<u>CHAP. 114.</u> Filing each ticket for the same,	\$0 10
Filing every caveat or appeal,	0 40
Preparing every execution, attachment, or other process not specially provided for, and entry of order therefor,	0 40
Filing every decree,	2 00
Every oath administered by him,	0 20
Taxing costs,	0 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,	0 20
Every additional copy thereof, per folio,	0 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.	0 20

*Sheriff or other ministerial officer's Fees.*

Serving citation or other process, (subpœna excepted), on each person,	0 50
Posting up the same in three public places directed by the judge,	1 00
Serving subpœna on each person,	0 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,	0 40
Affidavit for a capias and swearing,	0 10
Subpœna,	0 20
Tickets,	0 10
Trial and judgment in all causes,	0 20
<i>Venire,</i>	0 20
Returning papers on appeal to Supreme Court,	0 20
Each execution,	0 20
Affidavit of service of summons when required and swearing,	0 10

Affidavit on appeal and swearing, \$0 10  
 Appeal bond, 0 50

CHAP. 114.

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,	0 20
Serving capias and making return,	0 20
Bail bond,	0 20
Summoning a jury,	0 20
Summoning each additional juror where there are not sufficient by-standers,	0 05
Serving subpœna, each witness,	0 10
Serving execution,	0 20
Poundage on execution on sale of goods,	0 10
Poundage on execution where the amount is paid in money, for each four dollars,	0 05
All travelling to be computed from residence of justice to residence of defendant, on summons, capias or execution; and from residence of officer to residence of witness, on subpœna, each mile when necessarily done,	0 10
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,	0 10
Where subpœnas 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 subpœnas.	

*Witness' Fees.*

Each day in actual attendance,	0 50
All travelling, to be computed from the residence of the witness to the place of trial, per mile,	0 08

NOTE.—If the witness at the time of being served with the subpœna 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 that of his attendance with certainty.

CHAP. 114.*Juror's Fees.*

Each juror on every trial, \$0 20

*Fees of jailer or keeper of lock-up house.*

For every person committed to jail on civil process, 0 50

• For every person discharged therefrom, except insolvents and criminals, 0 50

## BASTARDY CASES.

*Justice's Fees.*

The examination of the woman in writing, 0 20

Warrant to apprehend the reputed father before birth of the child, 0 40

Bond to indemnify the township or district, 0 60

Warrant to bring the reputed father and mother before the justices, 0 60

All commitments, each, 0 20

Bond to perform order of filiation, whether on appeal or otherwise, 0 60

Warrant to apprehend the reputed father when he shall not have appeared at the time of making order of filiation, 0 40

Order of filiation, per folio, 0 10

*Constable's Fees.*

The same as in other cases before justices.

## FEES OF REGISTRAR OF DEEDS.

For the attestation of a subscribing witness, 0 20

For entering and registering every deed or conveyance, every 90 words, 0 10

For entering every docket of judgment or attachment, 0 50

For registering appraisement, per folio, 0 10

For entering and filing a discharge of judgment or attachment, 0 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), 0 20

For every office copy from the books of registry delivered out, 100 words, 0 10

For every certificate upon such office copy, where such shall be required, 0 20

	<u>CHAP. 114.</u>
For every search, whether for a single deed or conveyance, or for a single title, made on one and the same day,	\$0 20
For filing, indexing, and entering every bill of sale or copy,	0 20
For administering every oath thereon,	0 20
For entering and indexing every certificate of discharge,	0 20
For inspection of bill of sale,	0 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,	0 50
Appraisalment,	0 20
Notice and each necessary copy,	0 10
Appraisers, each,	0 25
At a sale, the same fees as to a Sheriff. In custody money to be allowed.	

## CROWN LAND OFFICE FEES.

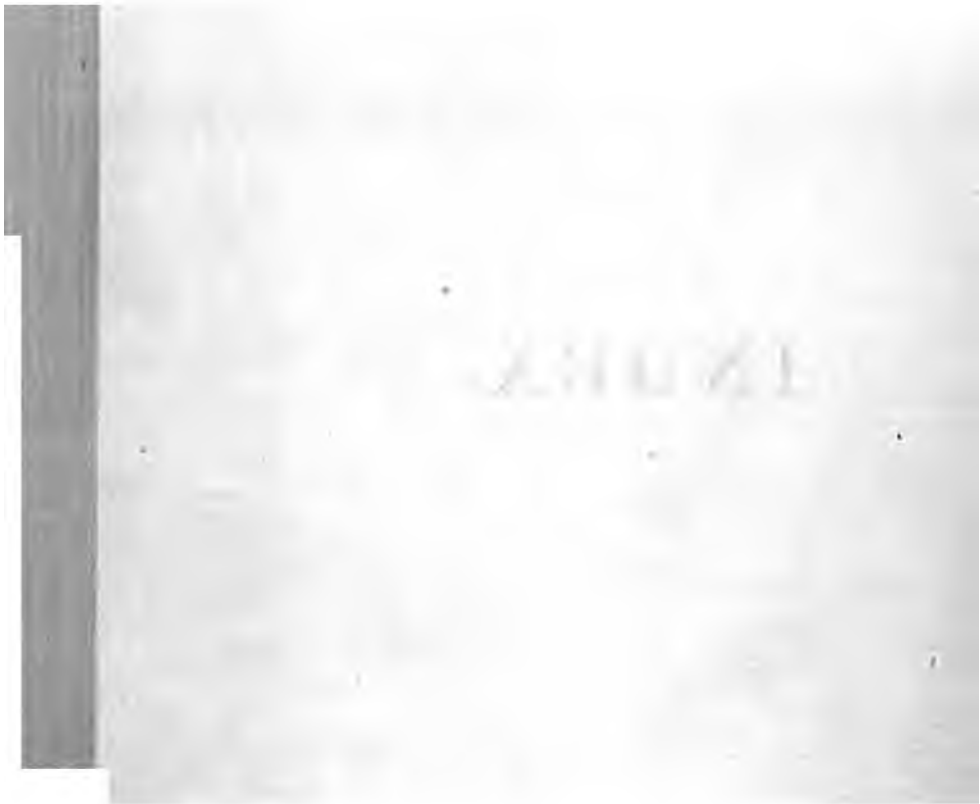
For every search,	0 30
Copy of any grant,	0 50
For every copy of, or portion of, or an entire general plan of a county, such reasonable sum as the Commissioner may approve.	
Copies of other documents, per folio,	0 10

The above fees shall not apply to applicants for Grants, or information in connection with such applications; and all such fees shall be paid into the office of the Treasurer and counted for in the annual account of the Commissioner of Crown Lands.



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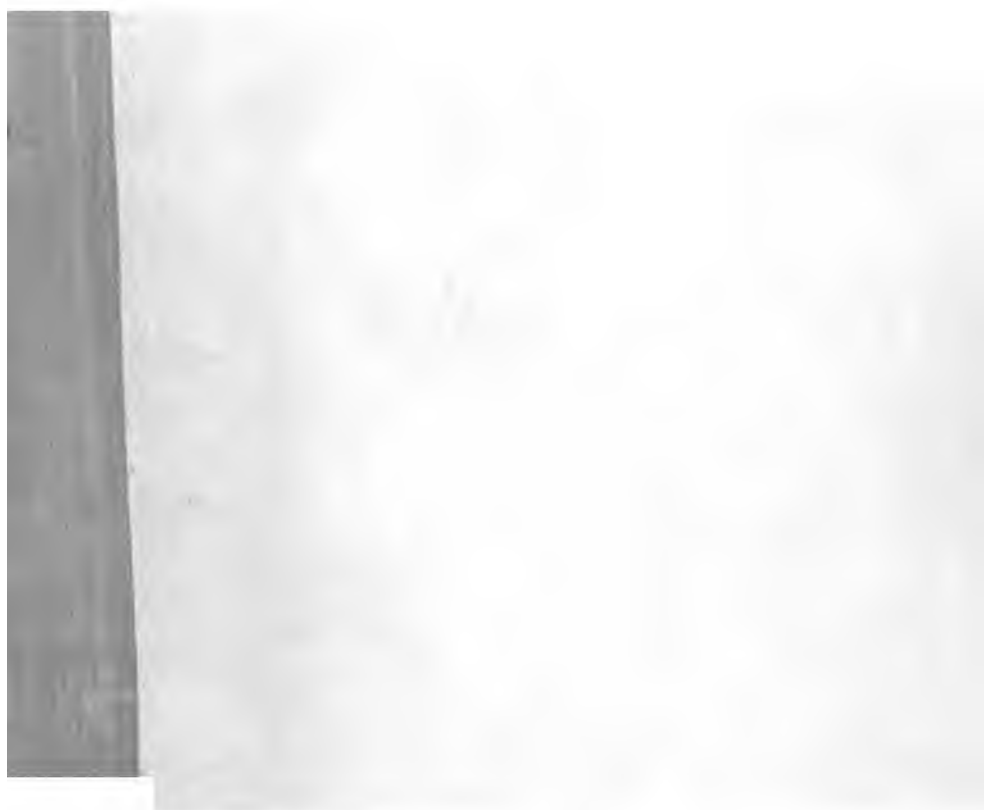
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**APPENDIXES**  
**TO THE**  
**REVISED STATUTES**  
**OF**  
**NOVA SCOTIA.**

---

**FOURTH SERIES.**

1020



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## APPENDIX A.

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Enactments of the Legislature of Nova Scotia remaining in force under Section 6 of Chapter 1 of the Acts of 1873, entitled, "An Act to provide for the publication of the Consolidated Statutes."



# 1. INTRODUCTION

The purpose of this study is to investigate the effects of various factors on the performance of a system. The study is divided into two main parts: a theoretical analysis and an experimental investigation. The theoretical analysis focuses on the underlying principles and models, while the experimental part involves the design and execution of tests to validate the theoretical findings.

The experimental results show that the system's performance is significantly affected by the input parameters. The data indicates that there is a strong correlation between the input variables and the output results. The findings suggest that optimizing the input parameters can lead to improved system performance. Further research is needed to explore the long-term effects and to develop more robust models for system optimization.

## I.—ELECTION LAW.

CHAPTER 28 OF THE ACTS OF 1863, ENTITLED "AN ACT TO REGULATE THE ELECTION OF MEMBERS TO SERVE IN THE GENERAL ASSEMBLY:"

*As amended by Chapter 20 of the Acts of 1864, Chapters 2 and 17, 1867, Chapter 1, 1871, § 8 and 9, and Chapter 2, 1871; and omitting expired provisions.* Qualification of voters.

1. Every male subject of Her Majesty, by birth, or naturalization, being of the age of twenty-one years, and not disqualified by law, who shall have been assessed for the year for which the register hereinafter provided for is made up, 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, shall be qualified to vote at elections of members to serve in the House of Assembly, for the county in which he shall be so assessed.

12 In cases within the eleventh section of this Act, (i. e. where the limits of an assessment district are different from those of a polling district) the Clerk of the Peace may, if necessary, summon and examine on oath any witnesses he may require to enable him to prove what portion of the names included in the roll belongs to the several polling districts to which the said roll extends, and the reasonable charges and expenses of said witnesses shall be a County charge. Witnesses may be summoned.  
To ascertain limits, &c.  
Their expenses.

14. \* \* \* \* \* For each revision section the Grand Jury shall annually nominate as revisors six persons, out of whom the Justices shall select three, who shall be duly sworn to the impartial performance of their duty, in the form prescribed in Schedule B to this Act annexed. Revisors, appointment of &c.

16. In the City of Halifax any three or more of the Aldermen to be appointed in each year, as 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 Revision in the city of Halifax.

manner and at the times herein prescribed; and such persons shall be duly sworn, as prescribed in the fourteenth section of this Act.

Lists to be made  
and given to re-  
visors.

17. 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
G. H.	0 00	0 00	0 00	0 00

Lists to be prepared and posted.

18. 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 district 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:

Notice there-with.

“The revisors will meet at ———, on the second [*Sunday on 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 district 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. }

19. 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 or struck off respectively in each polling district, with a notice appended to each list to the effect following:

"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 ———.

Dated the ——— day of ———, A. D., 18—.

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

20. 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.

21. 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 district 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 Peace. 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.

22. 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.

23. 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.

24. If the Assessors neglect to make up and deliver the lists, or wilfully deliver an incorrect list, or if the Revisors

List of voters added or struck off to be posted.

Notice therewith.

Notice to party objected to, &c.

Meeting of revisors, proceedings at, &c.

Firms.

Bodies corporate.

Paupers to be struck out.

Penalty for neglect or refusal of assessors.

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 Act shall pay a penalty of one hundred dollars, which any person may recover with costs, and each day a list is delayed shall be a separate offence.

List of non-resident electors.

25. 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 Peace 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 one of the polling districts in which their qualification exists.

List to be signed by sheriff and deposited with clerk of peace.

26. The lists shall be made up, signed by the Sheriff, and deposited with the Clerk of the Peace on or before the fourth day of May in each year, and shall thenceforth be the register of electors for the county.

If register not made, that of year previous to be used.

27. 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.

Revisors may summon witnesses, &c.

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

Penalty for non-attendance of witnesses.

Fees.

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

29. 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 bye-laws not inconsistent with this Act; and when the list is corrected, and an alphabetical list of every ward or polling district is made

up, it shall be signed by the Mayor and filed with the City Clerk, and be the register of electors for the said city.

30. The reasonable charges of the Sheriff, Clerk of the Peace, City Clerk, Assessors and Revisors, and of any other person required to assist in preparing the register of electors, shall be a county or a city charge, and shall be presented, assessed, levied and collected, like other county and city charges.

Expenses of preparing register, how paid.

32. 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.

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

33. 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 at 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 that all persons who are guilty of bribery or undue influence at the said election will, on conviction of such offence, be liable to the penalties mentioned in that behalf in the Chapter of the Revised Statutes, "Of the Prevention of Corrupt Practices at Elections," and the poll shall be taken in the week next following that wherein 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.

Proceedings of sheriff on receipt of writ.

35. On the day appointed for opening the election, the Sheriff, or his Deputy shall open his court at the County Court House, between the hours of ten and twelve of the 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.

Proceedings at  
Sheriff's court.

36. 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 candidates, and shall receive the Schedules of and administer the qualification oaths to candidates whose qualifications may be questioned, and who shall not have previously qualified; 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 Act, 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.

If candidates  
withdraw.

37. 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.

A person capable of being elected a member of the Assembly shall be a male British subject, of the age of twenty-years and upwards, and qualified to be an elector under the provisions of this Act, in some County of this Province, or have a legal or equitable freehold estate in possession, of clear yearly value of eight dollars; and any candidate at an election shall, if required, by any other candidate or any elector, or the Sheriff, make before the Sheriff the following declaration:

Qualification of candidates.

A. B., do declare and testify that I am a British subject, of the age of twenty-one years, and that I am duly qualified by the Act to regulate the election of members to serve in the General Assembly,\* to be an elector of this Province, and that my right to vote as said elector is in Polling District No. — in the County of —. *If the candidate claims to be qualified as a freeholder, then after the asterisk insert the words, "in right of freehold property of the clear yearly value of eight dollars, owned by me and described as follows": briefly describe the same, setting forth the County and the situate, and further particulars.*

Declaration.

The candidate, or any elector for him, may make and sign the declaration in the presence of a credible witness, and present it to the Sheriff, or it may be made on behalf of the candidate by any elector in presence of the Sheriff.

Declaration to be subscribed.

If the qualification of a candidate when questioned is not, before the close or adjournment of the Court, believed 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.

No Presiding Officer shall receive, nor shall any Poll Book 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.

When a poll shall have been granted, it shall be taken in the different districts 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 be closed, and the Sheriff shall, prior to the polling, cause a booth to be erected, or procure buildings at which the poll shall be taken.

Poll, when and where opened, &c.

When a poll has been granted, the Sheriff shall, by warrant under his hand, appoint a Presiding Officer for taking the poll.

Proceedings to take the poll.



the poll in each District, 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 District for the County, and the Sheriff shall also appoint a Poll Clerk for taking the votes under the direction of the Presiding Officer in each District, and the Clerk shall prepare a Poll Book and enter therein in separate columns the names of the candidates for whom votes are to be given within the District, 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, who shall communicate the same to the electors when required, and the Sheriff shall be responsible for the conduct of his Presiding Officers and Poll Clerks.

Sheriff may act as presiding officer.

44. The Sheriff may act as Presiding Officer in a District without precept and without taking the Presiding Officer's oath.

At election register to be furnished.

46. At an election held hereafter, the Sheriff shall furnish the Presiding Officer of each Polling District with a true copy of the register of electors of the Polling District for which he is appointed.

Elector to vote in one district only.

Must vote where resident at teste of writ.

47. No elector shall be permitted to vote in more than one Polling District in this Province on the same day.

48. 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.

Name and residence of elector to be entered and marked if on the list.

51. Before any elector is permitted to vote, he shall state his name and residence, the Clerk shall, under the direction of the Presiding Officer, enter his name on the Polling Book, and the Presiding Officer must find it on the register and mark it.

Proceedings of presiding officer on opening poll.

52. 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 :

" 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 District wherein I preside."

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 votes received in the District where I act as Poll Clerk.”

The Sheriff, a Justice of the Peace, or in their absence, any two electors are authorized and required to administer the oaths.

53 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 :

Inspector,  
agent, and  
clerk for candi-  
date, appoint-  
ment of.

“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, and the names of the candidates for whom they shall vote.”

Oath.

54. 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.

Votes of pre-  
siding officers,  
clerks, &c., how  
taken.

55. 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 :

Electors' oaths

#### 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 ——, as I verily believe, and that I have not before given my vote at this election. So help me God.”

#### 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 of 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."

Penalty for neglect or refusal of sheriff.

58. 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 fraudulent vote or voting twice.

59. 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.

If elector refuse oath.

60. If an elector when required shall not take the oaths prescribed, his vote shall be expunged.

No delay to take place at polling—questions to be asked.

61. 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; and for avoiding needless and factious questioning of voters, the elector shall immediately state for whom he votes, and thereupon the candidate against whom he votes, or his inspector or agent, may require the Presiding Officer to put such necessary and pertinent questions as may be proper for ascertaining the elector's right to vote, and the Presiding Officer shall allow no other questions to be put, nor shall any questions be put except through him, nor shall he permit the time to be unnecessarily protracted on pretence of questioning a voter; and the Presiding Officer shall promptly put the questions, and the Poll Clerk shall instantly enter in the Poll Book the purport of the answers, and read the same aloud to the voter. If the elector shall not promptly answer the questions, his vote shall be expunged, and he shall not be allowed to vote again.

Proceedings of presiding officer on close of poll.

62. 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 Clerks were 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 —."

Poll book to be sealed.

63. The Poll Clerk, after the Presiding Officer shall have taken the oath in the preceding section, shall enclose and seal

he Poll Book, and deliver it to the Presiding Officer at the poll, who shall give a receipt therefor, and shall forthwith return the same, so sealed, to the Sheriff.

64. If a Presiding Officer shall not, when required, administer the oaths to an elector, in a competent state of mind to take them, or 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 Act 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 for misconduct of presiding officer.

65. 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.

Penalty for not returning or altering poll book

66. If a Poll Clerk shall offend in the premises he shall forfeit forty dollars for every offence.

Penalty for misconduct of clerk.

67. 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 inquire into the matter, and may 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

Powers of presiding officers, &c.

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, the Sheriff or presiding officer shall swear in such special constables as may be requisite.

In case of incapacity of presiding officer.

68. 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.

In case of incapacity of poll clerk.

69. 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.

Proceedings of sheriff's court after the poll.

70. 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 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.

Penalty for sheriff making false returns.

71. 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.

Proceedings in case all poll books are not returned.

72. When any of the precepts for taking the poll shall not be returned at the time to which the sheriff's court was adjourned, the Sheriff shall not examine the returns made, but shall further adjourn the court to the following day, and so from day to day until the precepts and poll books shall have been all returned ; and in making such adjournment the

Sheriff shall publicly declare the reason, and he shall in no case continue the adjournment if the House of Assembly be in session, or to so late a day as shall interfere with the return of his writ in time for the then next session; but he shall in such cases complete the election, and return his writ, notwithstanding the deficiency of returns, and he shall in his return mention the deficiencies.

73. If a presiding officer shall not have returned his precept and poll book at the proper time, the Sheriff or a candidate, or an elector, may make complaint thereof on oath, before a Justice of the Peace, who shall summon the presiding officer to answer the same; and if he shall not appear and shew good cause for the delay, the justice shall by warrant commit him to jail, until he shall make due return of his precept and proceedings thereon, together with his poll book.

Return of poll book—how compelled.

74. 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 Act, 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.

Penalties, how prosecuted and applied.

75. Judgments for penalties under this Act shall be levied with costs on the goods or lands of the defendant, and for want thereof, or of payment by the defendant, may be levied on his body, and the defendant shall thereupon be committed to jail, there to remain until the judgments be paid, or until he shall have continued in jail for a period proportioned to the amount of the penalty, that is to say: one week for every four dollars thereof, but such imprisonment shall in no case exceed three months.

Judgment, how levied.

76. Penalties imposed by this Act shall be recovered with costs as follows: when the penalty shall not exceed forty dollars, it shall be recovered in a summary manner before two Justices of the County, from whose judgment either party may appeal to the Supreme Court on giving good security as follows: in the case of the plaintiff for payment of the defendant's costs, and in case of the defendant for payment of the penalty and costs if judgment shall be given against the appellant; and the Supreme Court shall try the same, and give judgment in

Jurisdiction as to penalties.

manner practised in summary causes. When the penalty shall exceed forty dollars, the same shall be recoverable by action of debt in the Supreme Court, in which action it shall suffice for the plaintiff to set forth in his declaration that the defendant is indebted to him in the amount of the penalty sought to be recovered, and to allege the particular offence for which the action is brought, and that the defendant hath therein acted contrary to this Act, without mentioning the writ for holding the election, or the return thereof, and on the trial and proof of the election shall be sufficient *prima facie* evidence without producing the writ.

Evidence.

Sheriff's fees.

77. On the return of a writ the Sheriff shall be entitled to receive from the provincial treasury six dollars for every member returned. When there is no contest he shall be entitled to two dollars from every candidate; and where there shall be a contest and a poll demanded four dollars from every candidate instead of two dollars: and further, when there shall be a contest there shall be paid to the Sheriff by the candidates in just proportions, according to the number of the polling places in which each candidate is interested, the following sums: four dollars for providing a booth or polling place for each polling district, except where the polling place shall be a public building that can be had without charge, four dollars for every presiding officer, and two dollars for every poll clerk, to include their travelling fees; and the fees shall be paid to the Sheriff on the day of opening his court for commencing the election; and the name of no candidate shall be entered on the Sheriff's poll book, or returned to presiding officers, who shall not have paid or tendered the Sheriff the full amount due from him under this section before the adjournment of the court on that day.

When to be paid

Making false declaration, &c. considered perjury.

78. Whoever shall wilfully, falsely, and corruptly make any declaration, oath, or affirmation required by this Act, 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.

Quakers may affirm

79. Quakers may affirm in any cases where an oath is required.

Penalty for disobedience to provisions of this act.

80. If any Sheriff, presiding officer, poll clerk, Assessor, Revisor, Clerk of the Peace, or other person whosoever, appointed or acting under the authority of this Act, shall wilfully contravene or disobey any of the provisions of this Act 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 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

the full sum of one hundred dollars, or any sum not less than twenty dollars they think just for the offence, and the writ shall have judgment and execution therefor without writ of suit. How recovered.

Penalties imposed by this Act 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 which the action is brought, and that the defendant hath since acted contrary to this Act, without mentioning the writ for holding the election, or the return thereof. Limitation and form of actions.

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 county, district or city where the offence was committed, for the use of the county, district or city. Appropriation of penalty.

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

The word "Sheriff," herein, shall mean Sheriff, or sheriff or deputy sheriff; "presiding officer" shall mean the person presiding to take the poll; "county," in a city where a county is divided into two districts for municipal purposes, shall mean such municipal districts; "Clerk of the Peace" shall include the City Clerk, Halifax; "district" shall mean polling district; and "election" shall mean the election of members to serve in General Assembly, when the Act requires such constructions. Meaning of terms used in Act.

Chapters five, seven and eight of the Revised Statutes, (second series) and all other Acts inconsistent with this Act, are hereby repealed. Acts repealed.

## SCHEDULE B.

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

Witness our hands and seals, this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 18—.

Before me,

2

J. P.



## Chapter 24 of the Acts of 1870,

ENTITLED, "AN ACT TO ESTABLISH VOTE BY BALLOT AT ELECTIONS; AND TO AMEND CHAPTER 28 OF THE ACTS OF 1863:"

*As amended by Chapter 1 of the Acts of 1871.*

All elections for Assembly to be by ballot.

A sufficient number of ballot boxes to be made and furnished to Sheriffs, and to be under their control.

Sheriff to provide each polling officer with ballot-box and polling book.

Sheriff shall provide booths or procure suitable buildings to take poll and presiding officer shall post up names of candidates inside and outside polling place.

At opening of poll, ballot box to be examined and to be found empty.

Elector must state his name and residence before voting—same shall be entered in poll-book; but in no case are names of candidates to be entered. Presiding officer to find and mark voters' names.

1. All elections for members to serve in the Legislative Assembly of Nova Scotia hereafter to be held, shall be by ballot.

2. The Governor in Council shall cause a sufficient number of ballot boxes to be furnished with locks and keys, to be made, each with a convenient aperture for depositing the ballots therein, and to secure the ballots from loss or illegal interference, and shall furnish the Sheriff of each county in the Province with the number required for the different polling places in such county; and such ballot boxes shall be under the control of the Sheriff, and if additional or new boxes are required thereafter, the county shall defray the expense thereof, and the Sheriff shall provide the same.

3. The Sheriff shall furnish the presiding officer of each polling district within his bailiwick with a ballot box and a true copy of the Register of electors of the district for which such officer is appointed, and also with a polling book, as now by law required.

4. The Sheriff shall, before the opening of the poll, cause booths to be erected, or procure suitable buildings for taking the poll, and on the day of the poll the presiding officer shall cause to be posted up, and kept posted up, in at least one conspicuous place inside and one outside the booth or building where the poll is taken, the names of all the candidates in large letters.

5. At the hour for opening the poll and before any vote is taken, the presiding officer and clerk shall open the ballot box, and in the presence of the candidates or their agents, if present, and of the electors, openly and publicly examine the same, and ascertain that it is empty.

6. Before any elector is permitted to vote, he shall state his name and residence; the Polling Clerk shall enter his name and residence in the poll book, but shall in no instance enter on the poll book the name or names or anything to indicate the name or names of the candidate or candidates for whom the elector votes. The Presiding Officer must find the name and residence of the elector, and mark the same on the Register, before the elector shall be permitted to deposit his ballot.

7. The Presiding Officer, when requested by an elector desiring to vote, shall state the names of the candidates, and also explain the method of voting, but shall not influence, nor attempt to influence, nor permit any person to attempt to influence, the elector to vote for any of the candidates at the election.

Presiding officers shall when required state the names of candidates, or shall explain method of voting, but shall not influence allow any one to influence voter.

8. No person shall be allowed to be present in any booth or apartment while a poll is being taken therein, except the Presiding Officer and his Clerk, and the candidates and their agents, inspectors and clerks, appointed according to the provisions of the fifty-third section of Chapter 28 of the Acts of 1863, entitled, "An Act to regulate the Election of Members to serve in the General Assembly," and any elector intending to vote; and such elector shall depart from such booth or apartment immediately after depositing his ballot in the box; and no other party or parties shall be permitted to enter the booth or apartment during the taking of the poll.

No person to be allowed to be in booth while poll is being taken except presiding officer and clerk, candidates and agents and inspectors and clerks, and an intending elector,—elector to depart after voting.

9. No person present at the polling shall reveal the vote of any elector at any such election if it shall become known to him; but any voter or person present at the polling, may be compelled, by a Judge in a court of law, or by an Election Committee of the House of Assembly, to disclose the name or names of the candidate or candidates for whom such voter shall have voted at any election, provided it shall be shown that such voter was not legally entitled so to vote; and the Presiding Officers, Poll Clerks, Agents, Inspectors, and Clerks shall, before the opening of the poll, take and subscribe an oath to the following effect before a Justice of the Peace, or the Presiding Officer:

No one present shall reveal vote and presiding officers shall take the following oath.

"I, A. B., do solemnly swear that I will not reveal to any person or persons, if it shall become known to me, the candidate or candidates for whom any elector votes at this election, unless required to do so by a court of law, or by an Election Committee of the House of Assembly. So help me God."

10. At the close of the poll the Presiding Officer, with the assistance of the Poll Clerk, and in the presence of the candidates, their agents, inspectors or clerks, or such of them as are present, shall count the ballots and declare the state of the poll in his polling district. All the ballots shall then be returned to the ballot box, and the poll clerk in every district shall close the ballot box, with all the ballots therein, and lock, seal and secure the box and seal up the polling book, having first entered the state of the poll therein, and also enclosed the key of the ballot box therein, and shall deliver the same so enclosed and sealed to the presiding officer, who shall give a receipt therefor, and forthwith transmit and deliver the same to the Sheriff, who shall receive and safely keep them unopened until the re-assembling of

At close of poll ballots to be counted and state of poll disclosed and ballot box and poll book to be forwarded to Sheriff.

the Court at the Court House on the day to which it had been adjourned.

If returns are not all in on the adjourned court day, then court to be adjourned from day to day till they are so n.

11. If on the day to which the court has been adjourned all the returns shall not have been made, the Sheriff shall not open the polling books, and shall adjourn the court to the following day, and so on from day to day until all the returns are made, and shall publicly state the cause 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 writ.

When books all in Sheriff shall ascertain and declare the state of the poll, and return the members elect.

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

Sheriff shall count the ballots, if any candidate shall request it, &c., &c.

13. If any candidate shall request it, the ballots shall be counted by the Sheriff, assisted by two efficient clerks to be appointed by him, and sworn to the faithful performance of their duty; each ballot shall be entered in the general poll book, and a duplicate thereof in a check book, both prepared with proper columns, and with the candidates' names entered therein. Before a new box shall be opened, the result of the first shall be ascertained. If in counting up the two books the numbers differ, the counting shall be tested by referring to the ballots. After the result is correctly ascertained, the ballots shall be returned to the box and kept locked up until the members 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. 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, so that the court shall not be kept open after four o'clock on any day. As soon as the result is known he shall make proclamation of the members chosen, and that the court is adjourned without day, and forthwith return the writ to the Provincial Secretary, and file the poll book and check lists with the Clerk of the Peace.

Presiding officer who shall fail to return ballot box, &c., may be taken by warrant of J. P.

14. If a presiding officer shall not have returned his precept, and the ballot box and check list at the proper time, the Sheriff or a candidate or an elector, may make complaint thereof on oath to a Justice of the Peace, who shall summon him forthwith to answer the same; and if he shall not shew good cause for the delay, the Justice may, by warrant, commit him to gaol until he duly return the precept, ballot box, and check list.

All votes to be by ballot which shall be a card containing names of candidates, enclosed in a white envelope

15. All votes shall be given by ballot or ballots enclosed in an envelope: and every such ballot shall be a paper or card ticket, which shall contain in writing or printing, or partly written and partly printed, the name or names of a

candidate or candidates for whom the elector intends to vote. Every voter shall deliver his ballot or ballots, in an ordinary four-cornered white envelope without any distinguishing mark; and any envelope containing more names than the number of members to be elected, or containing the name of any candidate more than once, shall not be counted, but shall be preserved as originally deposited.

16. No voter shall deposit more than one envelope with his ballot or ballots in the ballot box. If any elector shall not be provided with an envelope, the presiding officer shall furnish him with one. The providing of such envelopes for the various presiding officers shall be a county charge. It shall be the duty of every presiding officer to ascertain that no voter shall deposit more than one envelope in the ballot box.

Only one envelope to be deposited—presiding officer to furnish envelopes when necessary.

17. There shall be no public or political meeting held by the Sheriff in connection with the election on the day provided for his court in Chapter 28 of the Acts of 1863, but he shall attend within the Court House, from eleven o'clock in the forenoon until two o'clock in the afternoon, or till such time thereafter as the duties remaining to be performed require, and the Sheriff shall exclude from the place all persons not having business before him in connection with the election, and he shall preserve order and quiet. The names of the candidates, proposed by two electors, provided for by Section 36 of the said Chapter, shall be in writing presented to the Sheriff. It shall not be necessary for the candidate himself to be present on the said day of nomination; and instead of the oath provided by said Section 36, an affidavit made by the candidate, or his duly authorized agent, of qualification by law, shall be sufficient, sworn before a Justice of the Peace, or Commissioner of the Supreme Court. If no more candidates are proposed, or 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 in Section 36 of the said Chapter.

Sheriff shall not hold any public or political meeting on nomination day, but he shall attend in Court House from 11 till 2 for nomination.

Names of Candidates to be presented in writing.

If no more candidates than number of members to be returned are proposed, it shall not be necessary to demand a poll.

18. All portions of existing laws inconsistent with this Act are hereby repealed.

Inconsistent enactments repealed.

19. Presiding officers and others violating the provisions of this Act, shall be liable to the same penalties as are provided in Chapter 28 of the Acts of 1863, entitled "An Act to Regulate the Election of Members to serve in the General Assembly;" and if any person convicted of personating any elector, shall not pay the fine forthwith, he shall be imprisoned for a term not exceeding three months.

Penalties.

### Chapter 3 of the Acts of 1871,

ENTITLED, "AN ACT TO SECURE THE INDEPENDENCE OF THE HOUSE OF ASSEMBLY;"

*As amended by Chapter 15 of the Acts of 1872.*

Persons disfranchised.

1. 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 thirty 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.

Penalty.

2. Any person who being disqualified under the provisions of the first section of this Act, 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.

How recovered.

3. Penalties under the second section of this Act shall be recovered as an ordinary debt before a Stipendiary Magistrate, or any two Justices of the Peace, who shall at the time of pronouncing judgment fix the term of imprisonment, on default of payment as therein provided.

Names not to be registered.

4. The names of persons disqualified under the first section of this Act shall not be inserted in the list or register of electors, and if entered shall be struck off in the manner provided in Chapter 28 of the Acts of 1863.

Penalty for refusing oath.

5. Any elector may be required to take the following oath, and if he refuses or neglects to take the same when thereunto requested, his name shall be struck out of the poll book, and he shall not be polled again. The oath shall be administered by the presiding officer.

#### OATH.

Cash No. 1.

I, A. B., do swear that I was not at any one time, within thirty days before this election, 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, and that I have not resigned or been discharged from my employment in any of such services, in order to enable me to vote at this election. So help me God.

6. Actions for penalties under this Act shall be commenced within six months after the commission of the offence and not afterwards. Limitation of Actions.

7. Nothing in this Act 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 way office keeper or mail courier under the Post Office. Exceptions.

8. Any person disqualified under the first section of this Act and whose name shall not have been inserted in the List or Register of Electors by virtue of the fourth section of this Act and whose name shall have been struck off in the manner prescribed in Chapter 28 of the Acts of 1863, shall be entitled to vote at any election hereafter to be held in this Province; provided he shall have been discharged or ceased to be an *employe* under the first Section of this Act, between the time of making up the final lists of Electors, and within thirty days before such election, on his taking the following oath.— Person formerly disqualified may become qualified to vote

#### OATH NUMBER TWO.

I, A. B., do swear that I am legally qualified to vote at this election, and I verily believe that my name was struck off the List of Electors by reason of my being an *employe* of the Dominion or Local Government at the time such lists were last perfected, and that since the said lists were last perfected and for thirty days before this election I have resigned my said employment or been discharged therefrom (*as the case may be*), and that I have not resigned my said employment 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, or any or either of them or been discharged therefrom to enable me to vote at this election. So help me God. Oath No. 2.

## Chapter 14 of the Acts of 1872,

ENTITLED AN ACT TO FURTHER AMEND CHAPTER 28 OF THE ACTS OF 1863, ENTITLED, "AN ACT TO REGULATE THE ELECTION OF MEMBERS TO SERVE IN THE GENERAL ASSEMBLY."

Elector omitted from assessment roll or improperly struck off.

1. Any person possessing the qualification of an elector, as required by the first section of the Act hereby amended, at the time of assessment, and whose name shall have been omitted from the Assessment Roll or from the Revisors' List or Register of Electors, or being upon the Assessment Roll shall have been improperly struck off by the Revisors or omitted from their list or who shall have been insufficiently assessed to qualify him to vote, shall be entitled to vote at any election held under or based upon such list or register upon making an affidavit in the form in Schedule A, to be sworn to before any Justice of the Peace for the county in which such qualification exists and attested by such Justice; provided such person shall in person or by his agent file such affidavit with the Clerk of the Peace of such county, on or before the twentieth day of July, in the year in which such Revisors' List or Register of Electors is made up.

Form of affidavit.

Clerk of Peace to add name on receipt of affidavit.

2. The Clerk of the Peace, immediately on receipt of such affidavit, shall mark upon the back thereof the time of filing the same, and shall thereupon add the name of such person to the Register of qualified electors for the year, in the polling district in which such person is so qualified and entitled to vote, and shall sign and grant and deliver to such person or his agent a certificate in the form in Schedule B.

Persons complying with provisions of 1st Section are entitled to vote.

3. Every person complying with the provisions of the first section of this Act and producing the certificate of the Clerk of the Peace to the presiding officer at any election shall be entitled to vote in the polling district mentioned in such certificate, notwithstanding his name shall not have been entered by the Clerk of the Peace upon the Register of such polling district.

Clerk of Peace forfeits \$40 on refusing name of qualified person.

4. If the Clerk of the Peace shall neglect or refuse to enter on the Register the name of any person qualifying himself under this Act or shall neglect or refuse to grant the certificate hereinbefore provided for or shall enter the name of any person on such list or register after the twentieth day of July in any year, he shall for each such neglect or refusal or improper entry, forfeit and pay the sum of forty dollars, to be

recovered in the name of any person who shall sue therefor before any magistrate or other court of competent jurisdiction in the same manner as an ordinary debt.

5. Oath number one in Section 55 of the Act hereby amended is repealed and the following oath substituted therefor, that is to say :

Oath repealed  
and substitution

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 ; that at the time of the assessment for the year 18— I possessed and was assessable for (*real estate to the full value of one hundred and fifty dollars, or personal estate or personal and real estate together to the full value of three hundred dollars, as the case may be*) ; and that I have not before given my vote at this election. So help me God.”

6. Any person whosoever presenting himself to vote at any election may be required to take the oath number One as set forth in the next preceding Section of this Act ; and if he refuses or neglects to take the same, when thereunto requested, he shall not be allowed to vote, and his name shall be struck out of the poll book.

Any person may  
be required to  
take oath.

7. So much of the existing law as is inconsistent with this Act is repealed.

Inconsistent  
law repealed.

SCHEDULE A.

FORM OF AFFIDAVIT.

I, A. B., do swear that I am of the full age of twenty-one years and am a British subject ; that I reside at ———, in Polling District Number—, in the County of ———, that at the time of the assessment for the year 18— I possessed and was assessable for (*real estate to the full value of one hundred and fifty dollars, or personal estate, or personal and real estate together to the full value of three hundred dollars, as the case may be*), and am otherwise qualified by law to vote at election of members for the county in which I reside. So help me God.

Sworn to at ———  
in the County of ———  
this ——— day of ———  
A. D., 18—  
Before me  
C. D.,  
J. P. for  
the County of ———

A. B.



## SCHEDULE B.

## FORM OF CERTIFICATE.

Office of Clerk of the Peace,  
for the County of \_\_\_\_\_.

This is to certify that on the \_\_\_\_\_ day of \_\_\_\_\_  
A. D., 18—, I entered the name of \_\_\_\_\_, residing at  
\_\_\_\_\_, in Polling District No. —, on the list or register  
of qualified voters for the year 18—; the said A. B., having  
on that day duly qualified himself by filing with me the  
necessary affidavit of qualification as required by Chapter 14  
of the Acts of 1872.

E. F.  
Clerk of Peace for  
County of \_\_\_\_\_.

## II.

### Chapter 70 of the Revised Statutes.

#### THIRD SERIES.

#### “OF PROVINCIAL GOVERNMENT RAILROADS:”

*As amended by Chapter 12, 1865, S. 2, Chapter 4, 1867, and Chapter 1, 1873, S. 6:*

11. The commissioners or contractors are authorized to enter upon and take possession of any lands required for the track of railways or for stations as hereinafter provided; and they shall lay off the same by metes and bounds, and record a description and plan thereof in the registry of deeds for the county or district in which the lands are situate, and the same shall operate as a dedication to the public of such lands; the land so taken shall not be less than four rods nor more than six rods in breadth for the track, exclusive of slopes, of excavations and of embankments, except where it may be deemed advisable to alter the line or level of any public or private carriage road, or divert any stream or river, in which case it shall be competent for the commissioners to take such further quantity as may be found necessary for such purpose; also, at each station a sufficient extent for depot and other station purposes; provided always that, excepting at the termini or junction of the railways, the quantity so appropriated shall not exceed five acres, and that at any such terminus or junction, it shall not exceed eight acres. Where the line of railway runs through forest lands, or lands covered with wood, the lands authorized to be taken under this section may be laid off to the width of ten rods, inclusive of excavations and embankments, and shall be laid off and paid for under the provisions of this section. Whenever it shall be found necessary to remove or destroy buildings upon any lands taken for railway purposes under this section, it shall and may be lawful for the Governor in Council, by order, to direct that the compensation for the same be advanced from the public treasury. Provided always, that the amount so advanced shall remain a county charge, and shall be assessed in accordance with the provisions

Lands required  
for lines and  
terminal.

of this Chapter, and when collected shall be repaid with interest into the Provincial Treasury.

Powers of Commissioners to deposit soil.

12. The commissioners or contractors may enter with workmen, carts, carriages and horses, upon any lands, and deposit thereon soil, earth, gravel, trees, bushes, logs, poles, brushwood or other material found on the line of railway, or works connected therewith, or for the purpose of digging up, quarrying and carrying away earth, stones, gravel, or other material, and cutting down and carrying away trees, bushes, logs, poles and brushwood therefrom for the making and repairing of such railway. Before entering for the purposes mentioned in this section, the commissioners or contractors or the other persons acting under them or either of them, shall notify the proprietors or possessors of the lands, and shall carry out such purposes with as little injury as possible consistently with those objects.

Commissioners, &c., must notify possessors of the land, &c.

Construction of roads, bridges, &c., over lands, &c.

13. It shall be lawful for the commissioners to make or construct in, upon, across, under or over any land, streets, hills, vallies, roads, railroads or tramroads, canals, rivers, brooks, streams, lakes or other waters, such temporary or permanent inclined planes, embankments, cuttings, aqueducts, bridges, roads, ways, passages, conduits, drains, piers, arches or other works as they may think proper.

Alteration of courses of streams, &c.

14. They may alter the course of any river, canal, brook, stream or water course, and may divert or alter as well temporarily as permanently the course of any such rivers, streams of water, roads, streets or ways, or raise or sink the level of the same in order to carry them over or under, on the level of, or by the side of, the railway, as they may think proper.

Drains, &c., conveying water to or from railways.

15. They shall have power to make conduits or drains into, through or under any lands adjoining the railway, for the purpose of conveying water from or to the railway.

Value of materials, how ascertained.

16. In all cases under the twelfth section for entries upon lands and materials taken whether before or after the passing of this Chapter, the recompense for the injury to the land, the value of the earth, stones and gravel, and the trees, timber, brush and other materials dug, cut down or taken away for railway purposes, and for other damages to the proprietors or possessors, shall be referred to the determination of three arbitrators, one to be chosen by the proprietor or possessor, one by the commissioners or contractors or persons acting under them or either of them, and the third on the part of the county by some Justice of the Peace residing as near the premises as can conveniently be obtained to act and not interested in any question of damages; and in case of the absence or neglect after due notice of either party the arbitrators on that part shall be

Appraisement of Arbitrators.

named by some Justice of the Peace disinterested as aforesaid, residing as near the premises as conveniently can be obtained. Two of the said arbitrators may make an award, and the award shall be in writing, signed by the arbitrators making it. The arbitrators shall be entitled to a fee of one dollar, which shall be added to the damages and paid in the first instance by the commissioners, contractors, or persons acting under them.

17. The damages awarded shall be paid within one month, with interest thereafter, by the commissioners or contractors, or other party acting under them as aforesaid, as the case may be; either party, including the arbitrator appointed on behalf of the county, or any Justice of the Peace on behalf of the county, may appeal to the Supreme Court according to the provisions of section fifty-two.

Damages, &c.,  
how paid.

Appeal.

18. If appeal shall not be asserted in twenty days after the award, the sum awarded may be sued for and recovered, as debts of like amount are now by law recoverable.

Damages, how  
recovered.

19. The damages paid under the three last sections shall be chargeable on the county where the property lies, and shall be assessed, levied, collected and paid to the commissioners or contractors pursuant to the provisions of this Chapter.

Damages  
chargeable on  
county.

20. Any party in whose favor an award shall have been made, or shall hereafter be made, under provisions of this Chapter, in respect of damages for materials taken for railway purposes, may elect to consider such award as an award against the county.

Party may con-  
sider award as  
against county.

21. Upon such award being filed with the County Treasurer, with such election endorsed in writing thereon and signed by the party in whose favor the same shall have been made, the same shall become a county charge in the same manner as if it had been first paid by the contractor, under the provisions of this Chapter.

When award  
filed to be coun-  
ty charge.

22. Before any party other than the commissioners and contractors immediately under them shall be at liberty to enter upon private lands under the twelfth section, they shall be obliged to furnish the owner or possessor thereof, or leave at his residence, a written authority from such commissioners or contractors authorizing such entry; and thenceforth the owner shall, at his option, be entitled to consider any act to be done, and any liability to be incurred by the party so authorized as the act of the party himself, or of the person or persons whose authority is so given.

Persons other  
than contrac-  
tors, &c., must  
furnish owners  
with written au-  
thority.

Who may be  
held liable.

23. Nothing contained in this Chapter shall authorize the commissioners or contractors to cut down and carry away any fruit trees, or trees planted or preserved for ornament.

Fruit or orna-  
mental trees  
excepted.

24. The moneys payable for such lands and fencing shall form a county charge, but in the apportionment of the assessment,

Money paid for  
land to form  
county charge;  
how assessed.

the sessions shall have respect to the relative benefits derived from the railway by the several sections of the county, and shall apportion the assessment accordingly.

Jury—how drawn.

44. On the first Tuesday of June in every year, or at such other time and times as shall be fixed by a Judge of the Supreme Court, between the hours of ten o'clock in the forenoon and twelve o'clock at noon, the Prothonotary of every county in which a railway is being constructed, shall, in his office, in the presence of the Clerk of the Peace, who is hereby required to be present, and in the presence of any other persons who may desire to attend, draw from the grand jury box the names of twenty-eight persons then resident within the county, liable and able to serve as grand jurors for the then current year, in the same manner as special jurors are now drawn—a notice of such time to be posted up by the Clerk of the Peace, in at least three of the most public places near where such railroad damages have been sustained at least ten days before the drawing of such jury.

Striking of jury.

45. The Clerk of the Peace on the one side and the claimants for damages on the other shall reduce such list to fourteen by each striking off a name alternately as special jurors are struck.

Where same person holds offices of prothonotary and clerk of peace.

46. Where the same person shall fill the office of Prothonotary and Clerk of the Peace, and no person shall have been appointed for the purpose by a general or special sessions, who are hereby authorized to make such appointment, the Custos shall attend and act on behalf of the county instead of the Clerk of the Peace, and in the absence of the Custos, or in case the Clerk of the Peace and Custos, or either of them be claimants for damages, and no person be appointed by the sessions as before mentioned, or if the person appointed do not attend, then any disinterested magistrate may act for the county.

Lists to be furnished by railway commissioners.

47. The Board of Railway Commissioners shall, previously to the striking of the jury, furnish the Prothonotary with a list of the names of the several claimants for damages through whose lands the railway passes, according to the engineer's return to the Board, together with the quantities of land in each case dedicated to the public, and also with a list of the names of those who shall have sustained damages by reason of the railway having deprived them of access to their property, whether on land or water, or having destroyed or impaired any use, easement or privilege which they had enjoyed in relation thereto: and such commissioners shall also furnish the Prothonotary with plans distinctly exhibiting the premises of the claimants, with the line of the railway as it affects the same respectively. If the parties present who are interested as claimants agree upon any person to strike for them, the Prothonotary shall minute the

Regulations regarding the striking of the jury.

fact in writing, and such person shall act in that behalf: if the claimants cannot agree upon any person, or if no claimants attend, or if no one attend to strike on behalf of the county, the Prothonotary shall strike for the absent party in the same way as special jurors are struck. If no qualified person appear to strike on either side, the first fourteen names drawn shall be the jury to be summoned.

48. The Prothonotary shall thereupon forthwith issue and deliver to the Sheriff a venire as in schedule A, directing the Sheriff to summon such jury to appear at a time and place, to be therein named not more than sixteen days distant. And the Sheriff shall duly warn such jurors, and both he and the Prothonotary shall attend on the return day of such venire. .

49. The first seven jurors who shall answer upon being drawn and called as petit jurors are drawn and called shall be sworn by the Prothonotary according to the form of oath in Schedule B; and a panel of their names shall be prepared by the Prothonotary, and by him attached to the venire, and he shall hand such venire to the Sheriff, who shall with such jury proceed to the execution of their duty forthwith, or on a day to be then named, and whereof the jury shall be duly notified; and if the number of such jurors at any time be reduced by death, inability from illness, or other cause, or through neglect or refusal, the remaining jurors shall proceed as if no such reduction had taken place, provided the whole number be not reduced below five. The jury shall examine the premises in each case, and shall value the land taken and dedicated for the railway, and shall estimate the damages to the property and investigate each separate claim for damages according to the circumstances, and form their judgment of such damages, as well prospective as present, including loss for delay of payment; and also shall consider the relative benefit as well as injury done to the property by the construction of the railway; and the jury or in case of disagreement after four hours' deliberation, a majority whether of the full or reduced jury shall make an appraisalment in writing, signed by such jurors, setting forth the amount of damages awarded to each claimant, and particularizing the nature and grounds of such damages, and the property or right in respect of which they accrued; and the Sheriff shall within thirty days next after the swearing in of the jury file the venire and panel with the appraisalment and his return with the Clerk of the Peace. If the jurors be reduced below five before the appraisements are completed, the appraisements duly made previously thereto shall be returned to the Clerk of the Peace, and the Sheriff shall forthwith summon so many of the jurors drawn and struck, but not at first sworn, as shall be required to fill up such jury to the

Venire.

Proceedings of jury, duties, &amp;c.

Disagreement.

Returns of Sheriff.

Proceedings if jury reduced below five.

requisite number ; and such replenished jury, or a majority of them, or in case of their reduction to a number not less than five by the causes hereinbefore mentioned, a majority of such reduced jury shall proceed to make the remaining appraisements, and the Sheriff shall have power to adjourn or re-summon the jury from time to time, as occasion may require.

Jury to have access to papers, plans, &c.

50. For the purpose of securing a fair and impartial appraisal, the Sheriff and jury shall have free access to all public offices, and to the papers, plans and returns therein ; and the Railway Commissioners, engineers and officers, if required by either party, and any other persons if subpoenaed, shall attend and give evidence as witnesses, under oath, if required by any party interested, and shall also produce all plans, papers and documents under their control touching the matters at issue.

Fees.

51. The Prothonotary and Clerk of the Peace, or person acting for the county, shall be entitled to a fee of four dollars each for their services ; the Sheriff shall be entitled to four dollars per day ; and the jurors sworn shall be entitled each to the sum of three dollars for every day's actual attendance, in full payment for their services ; the jurors not sworn, but who were summoned and attended, shall be entitled to one dollar for such attendance, and to travelling fees as now allowed to petit jurors : and the Sheriff shall be entitled to a further sum of four dollars for warning such jury, which fees shall be assessed, levied, and collected, and paid as ordinary county charges. Every person summoned as a juror, and making default in the performance of any of the duties required of him, shall forfeit the sum of eighty dollars for each default, to be immediately levied under a warrant from the Prothonotary, directed to the Sheriff.

Forfeit for default of jury.

Appeal to supreme Court—proceedings in.

52. Within thirty days after the return of any appraisal, the Custos or Clerk of the Peace, on behalf of the County or any party interested who may deem himself aggrieved, may apply by affidavit to the Supreme Court, or a Judge thereof, for a summons and order to set the proceedings aside in whole or in part, or to alter the valuation, which summons shall be served upon the opposite party in the manner specified therein ; but such proceedings shall not be set aside upon any mere technical objection ; and the Court or a Judge shall have power upon satisfactory proof adduced by affidavit or *viva voce* examination of the parties and those interested, to confirm, increase or reduce the damages, or otherwise rectify the finding of the jury in substance or form ; or if such Court or Judge shall see fit, a jury shall be empanelled to try the disputed matters of fact with reference to such dam-

ages; and in case the damages complained of shall either be reduced in case of proceedings by the county or increased in case of proceedings by the claimant to the extent of one-sixth, costs shall be recovered by the county or party applying, but not otherwise; and the county shall pay the cost of such proceedings if the damages be not so reduced, to be added to the damages; and the party shall pay the cost of such proceedings if the damages be not so increased, to be deducted from the amount of his claim for damages; the Court or Judge shall make a final order touching the damages and costs, of which a certified copy shall forthwith be transmitted by the Prothonotary to the Clerk of the Peace, and by which the court of sessions shall be governed in the amount of damages and costs to be assessed and collected. The jury contemplated under this section is and shall be the ordinary petit jury of the Supreme Court or a special jury when specially ordered; and the trials shall take place before the Court or at sittings in the ordinary manner of trials. Damages under appraisements against which no appeal has been asserted, or which have been determined after appeal, shall be assessed, collected, levied, raised and paid as soon as possible, and without any needless delay on any pretence whatever.

Jury under this section.

Trial. Railway damages under appraisements to be assessed, collected and paid.

53. The amount appraised upon each county shall be payable in two years by equal annual instalments, the first instalment to be paid in one year after such appraisement with interest at six per cent. per annum for any delay after that period, and the other instalment to be paid in the ensuing year with like interest for delay of payment.

Payment of amount appraised.

54. After the expiration of the notice the Custos of the county shall deliver to each party in the form in Schedule C, a certificate showing the amount to which such party is entitled under such appraisement; and such certificate shall be signed by the Custos and countersigned by the Clerk of the Peace, and shall be payable to order, and be transferable by endorsement, and shall authorize the party entitled to receive the amount of such appraisement together with interest for any delay of payment after the instalment becomes due when the same becomes payable, and which shall be a charge upon the county for all the moneys payable thereunder until fully discharged.

Certificate of appraisement.

55. The damages appraised and established under this Chapter, and costs where costs shall be payable, shall be apportioned by the sessions without any delay amongst the townships, districts and places in each county and district, in proportion to the relative benefits which in the opinion of the court are likely to be derived by the several sections from the railway; and the proportion of each township, district and

Damages—how apportioned and collected.



place shall be assessed upon their inhabitants, and shall be levied, collected and paid over upon the same principle as county rates are or shall be by law levied, collected and paid over, provided that every tenant of real estate for any term less than freehold who shall pay rate under this Chapter shall be entitled to deduct from the rent payable by him to his landlord, or otherwise to recover from the owner of the estate so much of the rate paid by him as was imposed upon him in respect of such real estate.

In case sessions delay to make apportionment supreme court may amerce.

56. If the sessions shall neglect or delay to make any such apportionment, or to cause any of the moneys to be assessed, collected and paid over, which according to this Chapter they ought to cause to be assessed, collected and paid over, it shall be lawful for the Supreme Court or a Judge, upon application by any party interested, forthwith to amerce the county for the amounts for which the sessions ought to have made apportionment as aforesaid, together with the costs of proceeding before the Supreme Court or a Judge; such amercement to be apportioned and assessed by the Court or Judge upon the township, district and place in each county on the principle pointed out in the preceding section, and the Court or Judge may receive evidence thereon by affidavit or otherwise, and the sums amerced shall be levied, collected and paid over in a manner analogous to that in which county rates are levied, collected and paid over.

Amercement how collected.

57. The Prothonotary shall furnish the Clerk of the Peace with a copy of such amercement and apportionment forthwith after the same shall be made by the court or a Judge; and the Clerk of the Peace within fifteen days after the receipt thereof shall make out and deliver to the collectors the necessary rolls and instructions, and the collectors for each township, district and place, shall thereupon proceed to collect the amount of such amercement. The Clerks of the Peace, Assessors, Collectors, County Treasurers and all other officers whose agency now is or by any law might be required to carry out the assessment, collection and payment of county rates, are hereby required and shall be bound to carry out the provisions of this Chapter according to its true intent; and in case of neglect or violation of duty shall be liable to the like penalties as are now or as may be hereafter by law imposed for neglect or violation of analogous duties, touching the assessment, collection and payment of county rates, and also to an action for damages at the suit of any party aggrieved.

Assessors, collectors, &c., must carry out provisions of this chapter.

Compensation to collectors, &c.

58. All officers employed under the sessions, Supreme Court or a Judge, in assessing, collecting and levying, shall be compensated for their services under this Chapter, at such rate as the sessions shall award; and such compensation shall be a county charge.

59. The treasurers of the counties shall forthwith pay over all moneys received by them under this Chapter, to the Provincial Treasurer, who shall pay to the parties respectively the amounts to which they are legally entitled; and if the sums paid in shall not meet the claims in full, the sessions shall assess and cause to be collected and paid to the Treasurer the deficiency; and in their default the Supreme Court or a Judge shall amerce for the same, and cause it to be collected and paid in agreeably to the several provisions of this Chapter applicable to assessments by the sessions, and amercements by the Supreme Court or a Judge.

Sum assessed to be paid to Treasurer.

In case amount falls to meet claim.

62. No proceeding had or taken under any of the clauses of this Chapter shall be set aside on any formal or technical ground or in consequence of such proceedings not being in accordance with the strict letter of this Chapter, but such proceedings may be commenced anew, renewed or amended in any stage thereof on application to the Supreme Court or a Judge, and when so commenced, renewed or amended shall be as legal, valid and binding on all parties concerned as if no such formal or technical objection had existed thereto, or as if no such new or amended proceedings had been had.

Amendment of proceedings.

63. The cost of fencing necessary in the construction of the railway shall be levied from the respective counties within which the railway is or should be constructed, at the rate of two hundred dollars per mile of railway within each county, and shall be apportioned by the sessions, subject to amercement by the Supreme Court, and shall be collected and paid over to the Provincial Treasurer, in the manner directed by this Chapter in the case of railway damages. No county wherein this Chapter shall be carried out *bona fide* shall be required to assess in any one year for damages to lands and costs of fencing. The costs of fencing shall be payable in two years, one half in each year, and the first half thereof shall be imposed and collected in the year next following that in which the last instalment for land damages shall have been imposed, or in which the same under the provisions of this Chapter should have been imposed.

Cost of fencing.

64. The court of sessions shall require the treasurers and collectors to give sufficient bonds in the name of Her Majesty, conditioned for the faithful discharge of their duties.

Bonds from treasurers, &c.

65. If any person shall wilfully obstruct any person acting under the authority of the Commissioners in the lawful exercise of their power in setting out the line of the railway, or shall pull up or remove any poles, pegs, or stakes driven into the ground for the purpose of so setting out the line of the railway, or shall deface or destroy any pegs or marks put down or made for the same purpose, or shall wilfully obstruct any of the

Obstruction of workmen on railroad—penalty for, &c.

contractors or their servants or workmen while employed in the construction of the railway, he shall forfeit a sum not exceeding twenty dollars for every such offence.

Impeding officers in execution of duty; trespass, &c.

67. If any person shall wilfully obstruct or impede any officer, servant or agent of the Commissioners in the execution of his duties upon the railway, or upon or in any of the stations or other works or premises connected therewith, or if any person shall wilfully trespass upon the railway or any of the stations or other works or premises connected therewith, and shall refuse to quit the same upon request to him made by any officer, servant or agent of the Commissioners, or shall wilfully disturb, break down, injure or destroy any of the fences of the railway, or remove the same or any part thereof, or shall blot out or deface any regulations put upon the line, or pull down or injure the boards upon which such regulations are affixed—every such person so offending, and all others aiding or assisting therein, shall severally forfeit a sum not exceeding one hundred dollars for every such offence.

Injury to fences—penalty for.

Gates—penalty for leaving open.

68. If any person shall omit to shut and fasten any gate set up at either side of the railway for the accommodation of the owners or occupiers of the adjoining lands as soon as he and the carriage, cattle or other animals under his care have passed through the same, he shall forfeit for every such offence a sum not exceeding eight dollars.

Driving, &c., along the railroad—penalty for.

69. If any person, after the railroad or any section thereof shall be opened for use, shall himself go thereon, or shall ride, drive or lead any animal thereon, he shall for every such offence forfeit a sum not exceeding eight dollars; but nothing in this regulation shall prevent the passing across the railroad where the same is crossed by any other road on a level therewith.

Animals straying on railroad; penalty, &c.

70. If any animal shall be found going at large within the limits of the railroad, or any section thereof, after the same shall be opened for use, the owner thereof and the person through whose fault or neglect the same shall occur, shall for every such offence severally forfeit a sum not exceeding eight dollars; provided the railroad shall have on the sides thereof where it shall not cross some other road on the same level, a fence approved of by the Commissioners.

Riotous conduct in railcars, &c.; refusal to pay fare—penalty for.

71. If any person shall travel or attempt to travel in any carriage belonging to the railroad, without having previously paid his fare, and with intent to avoid payment thereof; or if any person having paid his fare for a certain distance, knowingly and wilfully proceed in any such carriage beyond such distance without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof; or if any person knowingly and wilfully refuse or neglect to

arriving at the point to which he has paid his fare to quit such carriage ; or if any person while in such carriage shall offend or annoy the other passengers therein by riotous conduct or by indecent or profane language, or shall disobey the lawful directions of the guard, or shall persist in smoking after a request from the guard or from any other passenger to desist therefrom—every such person shall for every such offence forfeit a sum not exceeding twenty dollars.

72. If any person be discovered either in or after committing or attempting to commit any such offence as in the preceding section mentioned, all officers and servants of the Commissioners and such other persons as they may call to their aid, and all constables, gaolers and peace officers, may lawfully apprehend and detain such person until he can conveniently be taken before some justice, or until he can be otherwise discharged in due course of law.

Detention of offenders—by whom.

73. If any person shall send by the railway any aquafortis, oil of vitriol, gunpowder, lucifer matches, or other goods of a dangerous character, without distinctly marking their nature on the outside of the package containing the same or otherwise giving notice to the book-keeper or other servant of the commissioners with whom the same are left at the time of so sending, he shall forfeit for every such offence a sum not exceeding eighty dollars.

Gunpowder and dangerous goods ; penalty for not marking them.

74. If any person shall wrongfully open or break open any gate or fence along the line of railway, or shall commit any trespass upon the lands appropriated for railway purposes, or upon any of the machinery, goods, chattels, firewood, sleepers or other property, real or personal, belonging to the railway department, he shall be liable to be proceeded against in a summary way, in the name of her Majesty the Queen ; and upon summons and conviction before one or more justices of the peace, or a Judge of the Supreme Court, according to the amount of damages claimed, he may in cases before a Judge of the Supreme Court in addition to every actual damage proven be fined or imprisoned, or both, as the Judge may order.

Mode of procedure against parties for trespassing on property of railway department.

Penalty, &c.

75. When any person shall be guilty of stealing any personal property belonging to the railway department, or of maliciously injuring the same, the title of such property may be laid in the Queen, and the party stealing or injuring the same may be proceeded against and punished, as in cases where such property is laid and proved to be that of a private individual, and where the value of the property stolen or damaged is laid at a value of two hundred dollars or under, the party charged may upon a summary information be arraigned and tried by a Judge of the Supreme Court without

Mode of procedure against parties for stealing or maliciously injuring property of department.

Where value is under two hundred dollars.

a jury; but such Judge shall on application of the party charged order a trial by indictment and jury, and the party convicted may be fined or imprisoned, or both, as such Judge may order and determine.

Proceedings to be in name of the queen.

76. In all proceedings under this Chapter, and in all civil proceedings touching real or personal property, purchased for or belonging to the railway department, the proceedings may be in the name of and the property described as belonging to Her Majesty the Queen.

Tolls—how levied.

77. It shall be lawful for the Commissioners to make and levy such tolls as in their opinion shall be best adapted for the accommodation of the traffic, and to alter and vary the same from time to time as they may see fit; provided that all such tolls be at all times charged equally to all persons, and at the same rate, whether per ton, per mile, or otherwise in respect of all passengers, and of all goods or carriages of the same description, and conveyed or propelled by a like carriage or engine passing only over the same portion of the line of railway under the same circumstances.

Tolls—how and by whom paid.

78. The tolls shall be paid to such persons and at such places and in such manner and under such regulations as the Commissioners shall appoint.

Refusal to pay tolls—penalty.

79. If on demand any person fail to pay the tolls due in respect of any carriage or goods, it shall be lawful for the Commissioners to detain and sell such carriage, or all or any part of such goods; or if the same shall have been removed from the premises of the railway, to detain and sell any other carriages or goods within such premises belonging to the party liable to pay such tolls; and out of the money arising from such sale to retain the tolls payable as aforesaid, and all charges and expenses of such detention and sale, rendering the overplus, if any, to the person entitled thereto; or it shall be lawful for the Commissioners to recover any such tolls by action at law.

Avoiding the toll by not giving correct account of goods; penalty for.

80. If any person being the owner at having the care of any carriage or goods passing or being upon the railway, shall on demand fail to give to any person appointed to collect the tolls a true and correct account in writing, signed by him, of the number and quantity of goods conveyed by any such carriage, and of the point on the railway from which such carriage or goods have set out, or are about to set out, and at what point the same are to be unloaded or taken off the railway; and if the goods conveyed by any such carriage, or brought for conveyance as aforesaid, be liable to payment of different tolls, shall fail to specify the respective quantities or numbers thereof liable to each or any such tolls, with intent to avoid in any case the payment thereof, he shall for every such offence forfeit

and pay to the Commissioners a sum not exceeding forty dollars for every ton of goods or for any parcel not exceeding one hundred weight, and so in proportion for any quantity of goods less than one ton, or for any parcel exceeding one hundred weight, as the case may be, which shall be upon any such carriage; and such penalty shall be in addition to the toll to which such goods may be liable.

81. If any passenger shall wilfully cut the lining, or remove or damage any part of the carriages, or shall get into or get off of any train when in motion, or at any other place than the passengers' platforms, or attempt to do so, every such person shall for every such offence forfeit and pay a sum not exceeding eight dollars.

Damages to carriages, &c.

82. Passengers at the road stations will only be booked conditionally, that is to say, in case there shall be room in the train for which they are booked. If there shall not be room for all so booked, the passengers for the longer distance will be allowed the preference, and for the same distance they will have priority according to the numbers of their tickets.

Passengers' rules of booking.

83. The owners of goods and property of every description conveyed by the railway, liable to injury from the weather or from smoke, sparks or fire, shall be responsible for their proper protection, unless under a special bargain, with the commissioners.

Commissioners not responsible for goods injured unless specially agreed for.

84. If any person shall load any carriage on the railway, so that the loading extends more than two feet beyond the flange of the wheels, or shall leave any carriage or goods or things under his charge to remain on the railway, or in any of the depots or sidings thereof, to an obstruction of the working of the railway, every such person for every such offence shall forfeit and pay a sum not exceeding eight dollars.

Overloading carriages, &c., causing obstruction to working railway, &c.

85. If any person convicted under any of the preceding sections, from 65 to 84 both inclusive, shall not pay the judgment and costs, and no goods can be found whereon to levy the same, such person may be imprisoned in the common jail of the county for a term not exceeding one day for every one dollar of the amount of the judgment, provided such term shall not exceed three months.

Persons convicted under preceding sections without property may be imprisoned.

87. In any county where there may be more than one Custos or Clerk of the Peace, any one or either of the Custodes or Clerks of the Peace, respectively, may and shall, within their respective districts, have under the provisions of this Chapter all the authority and powers conferred by this Chapter on the Custos and Clerk of the Peace of any county, and shall and may execute and perform the duties hereinbefore imposed on the said officers respectively; and the acts performed by them, or either of them, under the authority

Where counties divided into occasional districts.

aforesaid, shall be as binding, and have the same effect as if the said officers were styled the Custos and Clerk of the Peace, respectively, for such county.

- Interpretation.** 88. In the construction of this Chapter the term "commissioners" shall be held to include "company," meaning thereby any company incorporated by the Legislature of Nova Scotia to construct railroads within the Province; except where such construction is precluded by the context, or would be inconsistent with the charter or act of incorporation of such company, or would not be necessary to carry out the provisions of such charter or act. Similarly the words "railway department" shall be construed to include "company:" provided that nothing herein contained shall be construed to conflict with the British North America Act 1867, or with any statute of the Dominion of Canada.
- Exceptions.**
- Proviso.**

### SCHEDULE.

#### A.

To wit:

To the Sheriff of \_\_\_\_\_.

You are hereby commanded to summon A. B., &c., jurors, duly appointed to appear at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, then and there to qualify themselves for the purpose of appraising the damages sustained by certain claimants for damages in respect of lands taken for railway purposes, and in respect of other injuries within the provisions of Chapter 70 of the Revised Statutes, Third Series, and have you then and there this writ.

Issued this \_\_\_\_\_ day of \_\_\_\_\_ A.D., 18—.

#### B.

#### *Juror's Oath.*

You swear that you will truly appraise the damages sustained by the respective proprietors of lands taken for the track of railways and for stations, and that in the case of claimants for damages by reason of the line of railway having deprived them of access to their lands, or having destroyed or impaired any easement or privilege which they had enjoyed in relation thereto, you will truly appraise the damage so sustained by such parties respectively; and you do swear that in every case you will faithfully examine the premises, and will investigate each case according to the circumstances, and that you will impartially form your judgment of the damages as well prospective as present, including loss for delay of payment; and also will impartially consider and estimate the

relative benefit as well as injury to the property by the construction of the railway, and will deduct the benefit likely to be derived by the claimants from the railway running near to their lands, and that you will in all things decide according to the best of your judgment and ability. So help you God.

C.

This is to certify that A. B. is entitled to receive the sum of \$——, which on the —— day of ——, 18——, was appraised for railway damages under Chapter Seventy of the Revised Statutes, Third Series, payable to the said A.B., or his order, in two equal annual instalments in the manner following, that is to say: one half of the said sum on or before the expiration of one year from the date of the appraisement as above mentioned, and the other half on or before the expiration of two years from that date, together with interest on each instalment after the time of payment shall have elapsed.

Given under my hand this —— day of ——, A D., 18——.  
E. F., Clerk of the Peace. C.D. Custos of County of——





## APPENDIX B.

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Unrepealed Legislation of the Province of  
Nova Scotia upon matters wholly or partially  
within the jurisdiction of the Parliament of  
Canada, or of doubtful jurisdiction.

# THE HISTORY

The history of the world is a long and varied one, filled with many interesting events and people. It is a story that has been told for thousands of years, and it continues to be told today. The history of the world is a story of progress, of discovery, and of the human spirit. It is a story that has shaped the world we live in today, and it will continue to shape the world of the future.

# I.

## Chapters and parts of Chapters of the Third Series of the Revised Statutes.

### CHAPTER 22.

#### OF THE PENITENTIARY.

2. If any officer on being dismissed shall not quit the Penitentiary and give up possession of any building or apartment belonging thereto within a period to be fixed by the Board of Works, any justice of the peace shall, on application of the Board, by warrant, direct the Sheriff to remove such person out of the Penitentiary, or any building or apartment belonging thereto, in like manner as upon a writ of *habere facias possessionem*.

Mode of removing dismissed officers.

19. Every convict or person who shall commit any offence mentioned herein, for which he is not liable to be summarily convicted, may be tried before the Supreme Court at Halifax or in the county in which he shall be taken; and in case of any prosecution for any such offence, a copy properly attested of the order of commitment to prison with proof that the person in question is the same who was delivered with such order, and the production of the register of the prison shall be sufficient evidence of all the facts entered in such register as to such convict, without the production of any other proof that such convict had been convicted of felony and legally sentenced to imprisonment in the Penitentiary.

Convicts, how tried; register, evidence of its contents.

21. The laws for protecting justices in the execution of their office shall extend to the Board and the keepers of the Penitentiary.

Protection of board and keepers.

22. All actions and prosecutions for anything done in pursuance of these provisions shall be laid and tried in the county where the act was committed, and shall be commenced within six months thereafter.

Limitation of actions.

23. Any person convicted of felony under these provisions shall be liable to imprisonment in the Penitentiary for a term not more than fourteen years nor less than one year, as the court shall award.

Imprisonment regulated.

NOTE.—The remainder of this Chapter repealed by Section 1 of Chapter 75 of the Statutes of Canada, 1868,—The Penitentiary Act of 1868—and by Chapter 29, Canada, 1870.

## CHAPTER 23.

## OF SABLE, SAINT PAUL, AND SCATTARIE ISLANDS, AND OF LIGHT HOUSES.

Members of board, &c., may act as justices.

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.

Sable Island within Halifax county.

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.

St. Paul's, Victoria county.

NOTE.—Sections 1, 2 and 4 repealed by Section 11 of Chapter 59 of the Statutes of Canada for 1868. Section 6 obsolete.

## CHAPTER 28.

## OF NAVAL PROPERTY.

Property held for the naval service to be vested in lord high admiral or commissioners for time being.

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 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.

Also lands subsequently purchased.

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.

In case of death removal, &c., to be vested in successors.

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 suf-

Titles of commissioners to be used in deeds, &c.

ficient 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 goods, 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, surrender, 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.

Commissioners &c., may prosecute and defend actions.

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 any

Action not to abate on death.

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.

May recover  
and be liable to  
pay costs.

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## CHAPTER 32.

### OF AN ELECTRIC TELEGRAPH FOR MILITARY PURPOSES.

1. It shall be lawful for Her Majesty the Queen, or any officer duly authorized by her, to cause to be built and established a line of electric telegraph, to commence in the City of Halifax and extend thence through and along the Province of Nova Scotia till it shall reach the boundary line dividing the said Province from the Province of New Brunswick.

Building of line  
of telegraph  
authorized.

2. Such line may be built along the side of any public highway, street or railway, either above ground or under, provided it does not interfere with the right of travelling thereon or the posts and wires of the Nova Scotia Electric Telegraph Company.

Where to be  
placed.

3. All powers, advantages and facilities provided or given by the Act to incorporate the Nova Scotia Electric Telegraph Company, and all acts in amendment thereof, and all privileges enjoyed by that company for building and maintaining lines of electric telegraph in the Province of Nova Scotia, so far as the same are or may be applicable or required for building and maintaining a line from Halifax to the boundary of New Brunswick, are hereby given and granted to Her Majesty or any officer duly authorized by her in that behalf, and all persons acting and maintaining said line, subject, nevertheless, to all conditions and restrictions imposed upon such company.

Privileges of N.  
S. E. Telegraph  
given to Her  
Majesty.

4. All remedies, fines, pains, penalties, and forfeitures provided by the Act for incorporating the Nova Scotia Electric Telegraph Company, and the acts in amendment thereof, passed or to be passed during the present session of the legislature, and all acts passed for the protection of electric telegraphs, for

All fines, penalties, &c., for  
protection of  
telegraphs, &c.,  
to apply to this  
line.



injuring, interrupting, destroying, obstructing or intermeddling with the telegraph line during or after erection, shall apply and may be enforced in the name of Her Majesty by information or indictment against any person or persons injuring, destroying, obstructing or intermeddling with the line hereby authorized to be constructed.

To be used for imperial and military purposes.

5. The line hereby authorized to be constructed shall be used for public military and imperial purposes, and for no other services whatsoever.

## CHAPTER 34.

### OF THE PRIVILEGES AND NATURALIZATION OF ALIENS.

Aliens may hold and convey real estate. Titles not invalid.

Foregoing provisions not retrospective.

1. Aliens may take, hold, convey, and transmit real estate.

2. No title to real estate shall be invalid on account of the alienage of any former owner or holder thereof.

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.

NOTE.—Sections 4, 5 and 6 repealed by Chapter 66 of the Acts of Canada for 1866, amended by C. 22 Canada, 1871.

## CHAPTER 75.

### PART THE FIRST.

#### OF SHIPPING AND SEAMEN:

*As amended by Chapter 1, 1865, S. 13, and Chapter 11, 1869.*

Shipping articles in what cases necessary, their form, contents, attestations, &c.

9. The master of any vessel registered in and belonging to this Province, trading to parts out of the Province, shall not carry to sea, as one of his crew, any person, apprentices excepted, without entering into an agreement in writing with such person, specifying what wages he is to receive, the capacity in which he is to act, and the nature of the voyage.

ended. The agreement shall contain the date when made, and shall be signed by the master, in the first instance, and by each person shipped, at his port of shipment:—it shall be in the form, and shall contain, as far as possible, the particulars in the schedule hereto annexed; and a copy, attested by the signature of the master, shall, on reporting the arrival of the vessel, be deposited in the customs there. A clause may be inserted therein providing for the sale of the vessel during the voyage intended, and for the discharge of the crew in the event of such sale; but such clause must specify the amount of wages to be paid to the seamen upon such sale.

10. The master of any such vessel carrying to sea any person, apprentices excepted, without having entered into the agreement hereby required, shall forfeit twenty dollars for every such person; and the master not depositing hereby required a true copy of the agreement, shall forfeit twenty dollars.

Fines for shipping seamen contrary to that ninth section.

11. The entering into the agreement shall not deprive any man of his lien on the vessel, or of any legal remedy for the recovery of his wages; no agreement made contrary to the above provisions, and no clause depriving seamen of their right to wages in the case of freight earned, by a vessel subsequently lost shall be binding on the seaman. No seaman shall be obliged to produce the agreement, or a copy of it, to support his claim for wages.

Articles not to lessen seamen's lien for wages.

12. If a seaman having signed the agreement hereby required, shall not join his vessel, or shall refuse to proceed to sea in her, or shall absent himself therefrom without leave, a justice of the peace near the place shall, upon complaint on oath made by the master, mate or owner, by his warrant, cause such seaman to be apprehended and brought before him; and if such seaman shall not satisfy the justice as to such refusal, refusal or absence, the justice shall upon due proof commit such seaman to jail, there to be kept at hard labor for a period not exceeding thirty days; but if such seaman shall consent to join his vessel and proceed on the voyage, the justice, if requested by the master, shall, instead of committing such seaman, cause him to be conveyed on board the vessel or delivered to the master, and shall award to the master the costs incurred in such apprehension, not exceeding the sum of eight dollars, exclusive of jail fees, which shall be deducted from the wages to grow due to such seaman.

Proceedings when seamen refuse to join ship after articles signed.

13. If any seaman having received an advance on his shipping, and signing the agreement, and for whom any person shall have become surety and as such subscribed the agreement, shall not proceed on the voyage, such surety shall repay such advance; and if the master or owner shall be com-

Sureties liable for advance and expenses where seamen refuse to proceed on the voyage.

pelled to procure another seaman, and thereby incur additional expense, the surety shall also repay the same, provided it do not exceed half the sum originally advanced.

Execution of articles by surety; advance how recovered back when forfeited.

14. The party becoming surety shall subscribe his name to the agreement in the proper column thereof, opposite to the name of the seaman for whom he becomes surety, and such signature shall render him liable to the extent above declared; and the amount shall be sued for as debts of the like amount by law are; and on production of the agreement and proof of the execution thereof by the seaman and by the surety, and of the refusal of the seaman to proceed to sea, judgment shall be given against the surety for the advance paid to the seaman, and for the additional expense to the extent above named, together with costs, as allowed by law in case of debts of the like amount.

Forfeitures incurred by seamen for absence and other offences; mode of proof.

15. If any seaman after having signed the agreement, and during the period for which he has agreed to serve, shall without leave absent himself from the ship or from his duty, he shall in cases not of absolute desertion, or not treated as such by the master, forfeit out of his wages to the master or owner the amount of two days' pay for every twenty-four hours absence, and in like proportion for a less period of time, or at the option of the master, the expenses incurred in hiring a substitute to perform his work; and any seaman without sufficient cause neglecting to perform the duty required by the person in command, shall be subject to a like forfeiture for every such offence, and for every twenty-four hours continuance thereof; and if any seaman after having signed the agreement, or after the ship's arrival at her port of delivery, and before the discharge of her cargo, shall quit the ship without a discharge or leave from the master, he shall forfeit to the master or owner one month's pay out of his wages. No such forfeitures shall be incurred unless the fact of the seaman's absence or neglect, and the time or duration thereof be entered in the log book; this entry the owner or master shall in cases of dispute be obliged to substantiate by evidence of the mate, or other credible witness.

Mode of computing forfeiture where agreement is by the voyage.

16. Where the seaman has contracted by the voyage or by the run, the amount of forfeitures shall be ascertained thus:—If the duration of the voyage shall exceed one month, the forfeiture of one month's pay shall be considered a forfeiture of a sum bearing the same proportion to the whole wages as a month bears to the whole time spent in the voyage; a forfeiture of two days' pay or less shall be considered a forfeiture of the sum bearing the same proportion to the whole wages as that period bears to the time spent in the voyage; if the whole time does not exceed one month the forfeiture of one month's pay shall be considered a forfeiture of the

whole wages; if such time does not exceed two days, the forfeiture of two days' pay shall be considered a forfeiture of the whole wages. The master shall deduct all forfeitures from the wages of the seaman incurring the same.

17. A seaman deserting his vessel shall forfeit to the owner or master all his effects remaining on board, and the wages due to him; provided the circumstances of the desertion be at the time entered in the log book, certified by the signature of the master and mate or other credible witness. The absence of a seaman within twenty four hours immediately preceding the vessel's sailing without leave of the master, or at any time under circumstances shewing an intention not to return, shall be considered an absolute desertion; and if such desertion shall take place out of this Province, and the master shall be obliged to engage a substitute for the deserter at an increased rate of wages, he shall recover from such deserter the excess of wages paid to such substitute as wages are hereby made recoverable.

Forfeiture in case of desertion.

18. If any seaman or apprentice is imprisoned on the ground of his having neglected or refused to join or to proceed to sea in any ship in which he is engaged to serve, or of having deserted or otherwise absented himself therefrom without leave, or of his having committed any other breach of discipline, and if during such imprisonment and before his engagement is at an end his services are required on board his ship, any justice may at the request of the master or of the owner or his agent cause such seaman or apprentice to be conveyed on board his said ship for the purpose of proceeding on the voyage, or to be delivered to the master or any mate of the ship or to the owner or his agent, to be by them so conveyed, notwithstanding that the termination of the period for which he was sentenced to imprisonment has not arrived.

Imprisoned seamen may be taken on board to complete voyage.

19. Any person harboring or secreting a seaman who shall have signed the agreement hereby required, and absented himself from his vessel without leave, knowing or having reason to suspect him to be so absent, shall forfeit four dollars. No debt over one dollar incurred by a seaman after signing the agreement shall be recoverable until the conclusion of the voyage. The keeper of a public house shall not detain any effects of a seaman for any debt contracted by him. In case of such detention any justice shall on complaint on oath by or on behalf of such seaman inquire into the matter, and he may by warrant cause such effects to be delivered to such seaman.

Harboring or secreting seamen, how punished; seamen's debts how and when recoverable.

20. The master or owner shall pay every seaman his wages if demanded within three days after the delivery of his cargo or ten days after the seaman's discharge, which-

Seamen's wages when and how recoverable.

ever shall first happen. The seaman on his discharge shall be entitled to receive one-fourth of the estimated balance due to him, and in default thereof the master or owner shall forfeit to the seaman two days' pay for each day not exceeding ten days that such payment without sufficient cause is withheld. This forfeiture shall be recoverable in the same manner as seamen's wages; but this provision shall not apply to cases where the seaman by the agreement is paid by a share in the profits of the adventure.

Payments to seamen valid notwithstanding previous assignments.

21. The payment of wages to a seaman shall be valid notwithstanding any bill of sale or assignment thereof or any attachment or incumbrance thereon. No assignment or sale of wages made prior to the earning thereof, and no power of attorney to receive wages expressed to be irrevocable shall be valid or binding on the party making it.

Seaman entitled to certificate; fine for refusing.

22. A seaman shall on his discharge be entitled to a certificate signed by the master, of his period of service and the time and place of his discharge; and a master refusing such certificate without reasonable cause shall forfeit twenty dollars.

Proceedings for wages where seamen about to proceed on a voyage.

23. If a seaman having been three days discharged and desiring to proceed again to sea, shall require immediate payment of his wages, any two justices on his application and proof that delay would hinder him of employment, shall summon the master or owner of the vessel to shew cause why immediate payment should not be made; and if cause be not shewn they shall order payment forthwith; and in default of such payment the master or owner shall forfeit twenty dollars.

Wages how collected when under eighty dollars.

24. When the wages due to a seaman do not exceed eighty dollars, any two justices in the neighborhood on complaint upon oath by or on behalf of such seaman, shall summon the master or owner to appear and answer such complaint; and on his appearance, or in default thereof on proof of his having been summoned, the justices shall on the oath of the parties and their witnesses, examine into the complaint and order payment of the amount due; and if such order be not obeyed within two days, they shall issue their warrant to levy the amount awarded, by distress and sale of the effects of the party on whom such order was made, rendering to him the overplus if any after deducting the expense attending the complaint and the distress and levy; and if sufficient distress be not found, they shall cause such wages and expenses to be levied on the vessel; and if she be not within their jurisdiction, they shall cause the party on whom the order was made to be committed to jail, there to remain until payment of the amount awarded, and all costs and expenses. The award of such justices shall be final and conclusive.

25. The stipendiary magistrate at Halifax and any stipendiary magistrate at Pictou shall, within the County of Halifax, and the limits of the jurisdiction of the commissioners of streets for Pictou, respectively, have and exercise the same jurisdiction as is conferred by this Chapter on two justices of the peace.

Stipendiary magistrates to have jurisdiction of two justices.

26. A jury shall be allowed in the trial of causes under this Chapter, according to the provisions of the Chapter of the Revised Statutes "Of the Jurisdiction of Justices of the Peace in Civil Cases;" except that the application therefor may be made at any time before the return day of the summons; provided sufficient time shall be given to the justices to issue a venire and have such jury summoned.

Jury allowed.

27. If a suit for the recovery of a seaman's wages be brought in the Court of Vice-Admiralty or any court of record of this Province; and it shall appear to the judge that the plaintiff might have had as effectual a remedy by complaint to justices as above directed, he shall certify to that effect, and no costs of suit shall be awarded the plaintiff.

Costs to be disallowed in the vice admiralty where wages might be recovered before justices.

28. The master of every such vessel shall constantly keep on board a sufficient supply of medicines, suitable to accidents and diseases arising on sea voyages, and in default thereof or in case a seaman shall sustain injury in the service of the vessel, the expense of the surgical and medical advice and attendance and medicine he shall require until he is cured or returns, shall be borne by the owner or master of the vessel without any deduction on account of wages.

Medicines to be kept on board vessels.

29. No such master shall discharge any of his crew at any British port out of this Province without the sanction in writing of the officer appointed in that behalf or of the principal officer of the customs, or of two respectable merchants resident there; nor at any foreign port without the sanction in writing of the British minister, consul or vice consul there or of two respectable resident merchants; any of whom may make examination on oath, and grant or refuse a certificate of such sanction according to their discretion.

Crews discharged abroad only on certificate.

30. No such master shall leave at any place abroad, either on shore or at sea, any of his crew as unfit to proceed on the voyage, or having deserted or disappeared, without having obtained a certificate, as in the foregoing section, approving thereof, if there be any such persons to apply to for that purpose; and such persons may make examination on oath and grant or refuse such certificate according to their discretion.

Crews not to be left abroad unless for good cause duly certified.

31. In any action brought for violation of this or the preceding sections, it shall be incumbent on the master to prove his having obtained the certificate thereby required, or prove the impracticability of obtaining such certificate.

In case of action the burden of proof as to certificates to be upon the master.

● Entering the naval service shall not be held desertion.

32. Nothing herein shall prevent the entry of any person belonging to any merchant ship into Her Majesty's naval service; such entry shall not be a desertion, and shall not incur any forfeiture whatever; no clause creating a penalty or a forfeiture for such entry shall be inserted in any ship's articles.

Seamen's right to wages and effects when entering the naval service.

33. A seaman received into such service from a merchant vessel not having committed an act of total desertion, treated as such by the master, shall on such entry receive all his effects from such vessel, and if she shall have earned freight, the proportionate amount of his wages from the master up to such entry, in money or a bill on the owner. For failure to deliver such effects and money or bill, the master shall forfeit one hundred dollars. If no freight has been then earned, the master shall give to the seaman a bill on the owner for his wages then due, payable on the ship's arrival at her destined port. If he be unable to ascertain the amount, he shall give to the seaman a certificate of his period of service and the rate of his wages, and shall produce to the officer commanding such ship of war, the shipping agreement. On such delivery of the seaman's effects and settlement of his wages, the officer commanding shall on request of the master give him a certificate under his hand endorsed on the agreement of the entry of the seaman into such ship of war.

Court's power to reduce penalties; limitation of actions.

34. The court or justices before whom proceedings are brought for recovery of penalties hereby imposed may make such reduction therein, not exceeding one half of the original amount as they think fit. All such proceedings shall be commenced within two years after the offence; or if committed without the Province within six months after the return thereto of the offender.

Coasting vessels not affected by this chapter.

35. The foregoing sections shall not extend to any ship trading coastwise between the ports of this Province or to any regarded as coasting vessels by any law of this Province.

Authority conferred on shipping masters by merchant shipping act of 1854 and cap. 40 acts 22 and 23 Victoria, extended to registrar of shipping at Halifax.

39. The powers and authority conferred upon shipping masters by "The Merchant Shipping Act, 1854," and the duties imposed upon shipping masters by the act twenty-two and twenty-three Victoria, Chapter forty, for the establishment of a reserve of royal naval volunteers, shall extend and belong to the registrar of shipping at Halifax, and shall be exercised and performed by him according to the circumstances of each case, subject to the approval of the Governor.

40. Process under this Chapter shall be directed to the Sheriff or his deputy, or when the Sheriff is interested to the Coroner.

*Schedule in this Chapter referred to.*

An agreement made pursuant to Chapter seventy-five, of an act of the General Assembly of Nova Scotia, passed in the twenty-seventh year of the reign of Her Majesty Queen Victoria, entitled "An Act for revising and Consolidating the General Statutes of Nova Scotia," between ———, master of the ship ———, of the port of ———, of the burthen of ——— tons, and the several persons whose names are subscribed hereto. Form of agreement.

It is agreed by and on the part of the said persons, and they severally hereby engage to serve on board the said ship in the several capacities against their respective names expressed, on a voyage from the port of ——— to ———, [*here the intended voyage is to be described as nearly as can be done, and the places at which it is intended the ship shall touch, or if that cannot be done, the nature of the voyage in which she is to be employed,*] and back to the port of ———; and the said crew further engage to conduct themselves in an orderly, faithful, honest, careful and sober manner, and to be at all times diligent in their respective duties and stations, and to be obedient to the lawful commands of the master in every thing relating to the said ship, and the materials, stores and cargo thereof, whether on board such ship, in boats or on shore. [*Here may be inserted any other clause which the parties may think proper to be introduced into the agreement, provided that the same be not contrary to and inconsistent with this Chapter.*] In consideration of which services to be duly, honestly, carefully and faithfully performed, the said master doth hereby promise and agree to pay the said crew, by way of compensation or wages, the amount against their names respectively expressed. In witness whereof, the said parties have hereto subscribed their names on the days against their respective signatures mentioned.



PLACE AND TIME OF ENTRY.			Men's names.	Age.	Place of Birth.	Quality.	Amount of wages per calendar month, share or voyage.	Sureties for seamen.	Witness to execution.	Name of ship in which seaman last served.
Day.	Month.	Year.								

NOTE.—Sections 36, 37 and 38 repealed by Section 15 of Chapter 54, Canada, 1875. Sections 1 to 8 inclusive repealed by Chapter 17, Canada, 1870. See too Chapter 22, Canada, 1872,—“An Act respecting the Shipping of Seamen in Nova Scotia.”

## PART THE SECOND.

## OF THE REGISTRY OF SHIPS.

1. The Governor in Council may appoint for every port at which they deem it expedient to authorize the registry of ships, a principal officer of customs and of navigation laws, who shall be the registrar for all the purposes contemplated by the imperial act, entitled "The Merchant Shipping Act, 1854," and the imperial act or acts since passed. Appointment of registrars.
2. The Governor in Council may appoint at every such port and at any other port or ports in the Province, an officer to superintend the survey and admeasurement of ships in conformity with the said act, and the same person may be appointed both the registrar and surveyor at any such registry port. Appointment of surveyor.
3. Such registrars and surveyors shall receive for their services in addition to any fees by law allowed, such sums as may be annually granted by the Legislature. Salaries of registrars and surveyors.
4. Such surveyor shall be entitled to fees for the measurement of every vessel about to be registered for the first time, or requiring measurement for the purposes of registry; which fees shall be paid by the registered owner as follows: two dollars for vessels under one hundred tons; three dollars for vessels from one hundred to two hundred tons; and four dollars for vessels over two hundred tons; ten cents per mile for travelling fees going and returning. Surveyor's fees.
5. So much of the Act entitled "The Merchant Shipping Act, 1854," as is inconsistent with this Chapter, is hereby repealed as to ships registered in this Province. Part of "merchant shipping act, 1854," repealed.
6. In the event of the certificate of registry of any ship being mislaid, lost or destroyed, the registrar of the proper port shall grant a new certificate, as the case may require, on proof by affidavit of the original certificate having been mislaid, lost or destroyed. New certificate—how granted.
7. Collectors of colonial duties shall have the same power to endorse from time to time on the certificate of registry of any ship at any port where such ship may be any change of master which takes place at that port, as are given to registrars of shipping under this Chapter, and the act of the imperial parliament, entitled "The Merchant Shipping Act, 1854," and the imperial acts since passed. Endorsement of change of masters.

## CHAPTER 79.

## OF PILOTAGE, HARBORS AND HARBOR MASTERS:

*As amended by Chapter 85, 1865, and Chapter 27, 1866.*

Sessions may  
appoint harbor  
master.

17. The sessions upon the recommendation of the grand jury may from time to time appoint and license one fit and proper person to be harbor master for any harbor within any county or district where it shall be judged by the sessions that the services of such officer may be required, and shall prescribe the duties of such harbor masters and the limits of the harbors over which their authority shall extend.

Fees how deter-  
mined.

18. The sessions shall fix and determine the amount of fees to be paid to harbor masters by vessels entering such harbors—provided they shall not exceed the fees payable at Sydney under schedule B. Vessels engaged in the coasting trade and in fishing shall be exempt from such fees; but the sessions shall have no power to establish fees in respect of any navigable river which forms the dividing line between two counties.

Bridgeport and  
Spanish River;  
appointment of  
harbor master.

19. The Governor in Council shall appoint for each of the harbors of Bridgeport and Spanish River, in the Island of Cape Breton, one fit person to be harbor master thereof.

Harbor master  
to continue in  
office, how long.

20. Harbor masters heretofore appointed shall continue in office only until others shall be appointed in their place, or until they shall be re-appointed under the provisions of this Chapter.

Power of ses-  
sions relative to  
anchorage, &c.,  
making of bye-  
laws.

21. The sessions shall also make regulations for the anchorage of vessels and establish convenient and proper places for vessels to discharge their ballast at, and may make agreements with persons for erecting wharves and other conveniences for such vessels to discharge their ballast upon, and may make bye-laws to compel vessels to discharge their ballast upon such wharves or at such other places as they may appoint, and for allowing masters of vessels a reasonable time for disposing of or selling such ballast, and may affix penalties not exceeding forty dollars for breach of any regulation or bye-law.

Wharfage,  
how established  
and collected.

22. The rates of wharfage to be paid by vessels using the wharves and other conveniences mentioned in the preceding section shall be established by the sessions and may be recovered as a private debt.

Buoys, &c.

23. The general or any special sessions shall from time to time direct as many buoys and other marks to be placed in

and about the various bays and harbors in their respective counties as to them may appear necessary for the safety of the shipping and the convenient navigation of those harbors respectively, and shall make regulations for the maintenance of such buoys and marks as well as of any buoys and marks heretofore placed or erected or which may hereafter be erected, by private enterprise or at the public expense, and may authorize the harbor masters to carry the same into effect, and may affix penalties for breach of any such regulations, not to exceed twenty dollars for any one offence.

Regulations, &amp;c.

Penalties.

24. The sessions may appropriate such part of the fees collected by harbor masters as they see fit to the procuring, placing, erecting and keeping in repair of buoys and water marks in the harbor where such fees are collected.

Buoys, &amp;c., how repaired, &amp;c.

25. The sessions may by regulations to that effect authorize the imposition of fines upon harbor masters for neglect of duty, not to exceed eight dollars for any one offence, to be sued for and recovered as other penalties are.

Fines.

26. The sessions shall appropriate out of the district funds of Saint Mary's and out of the license funds at Antigonishe the sums necessary for the purposes of the twenty-third section, which shall be repaid by a regular rate to be by them established from time to time upon the different vessels coming into the respective harbors according to the tonnage thereof, which rates shall be collected by the harbor master and paid over to the District Treasurer.

Funds, how raised.

27. At St. Mary's the last preceding section shall not apply to vessels exempted from the payment of harbor dues.

Exemption at St. Mary's.

28. It shall be the duty of the harbor masters to prosecute all persons violating the regulations or bye-laws of their respective harbors.

Harbor master, prosecution by, &amp;c.

29. No regulation or bye-law to be made by the sessions under this Chapter shall be in force until approved by the Governor in Council.

Regulations to be approved by governor.

30. Any person feeling aggrieved by any regulation or bye-law may complain thereof on affidavit to the Supreme Court in the county, and the Court shall inquire into the complaint, and if it appear that the regulation or bye-law is contrary to law or oppressive, shall annul the same, and the sessions shall not afterwards make any regulation or bye-law to the same effect.

Relief to parties aggrieved by application to supreme court.

31. The sessions shall from time to time appropriate out of the district funds sufficient sums to keep in repair the tow-path of the harbor of Antigonishe.

Antigonishe tow path.

32. At any general or special sessions of the peace for the Township of Yarmouth, regulations may be made to allow the removal of sand, gravel, or stones from any of the shores or

Sessions of Yarmouth may direct and prevent removal of sand, &amp;c., from harbors within

beaches round the harbors of Yarmouth, Chebogue, Cook's Harbor or Kelly's Cove, or near thereto, within that Township, or to prevent the removal of sand, gravel or stones from the shores or beaches of the said harbors, or adjacent thereto; and penalties may be affixed not to exceed twenty dollars for the breaking of such regulations.

Harbor masters to furnish regulations.

33. All harbor masters shall furnish copies of the regulations made by the sessions by virtue of the twenty-first section to the licensed pilots of the harbor, who shall give a copy thereof to the master or commander of every vessel which they shall take in charge.

Harbor masters fees regulated by schedule B.

35. The fees to be taken by harbor masters shall be at the rates in Schedule B, according to the registered tonnage of the vessels entering the harbors, but vessels bound to Big and Little Glace Bay, Lingan, Bridgeport, Cow Bay, and from the Bras d'Or Lake and calling at Sydney, but not discharging ballast in Sydney harbor, shall not be liable to pay any harbor master's fees at the latter place.

Halifax excepted.

36. The County of Halifax is excepted from the operation of sections seventeen, eighteen, twenty, twenty-three, twenty-four and twenty-five of this Chapter.

Appointment and Jurisdiction of Harbor master of Sydney.

44. The Governor in Council may appoint a harbor master for Sydney, in the County of Cape Breton, who shall have jurisdiction within the following limits, that is to say: all that portion of Sydney harbor lying to the southeast of a line drawn from Point Edward to Baley's Point, South Bar, to include Muggah's Creek, and to extend up Spanish River to Gibbons' Bridge.

Vessels not to pay at North Sydney.

45. Vessels entering the port of North Sydney, but intending to load at the port of Sydney, shall be liable for harbor dues at the latter port only.

## SCHEDULE B.

### HARBOR MASTER'S FEES.

#### *At Sydney and Bridgeport.*

For vessels not exceeding 100 tons,	\$1 00
For vessels exceeding 100 tons and under 200 tons,	2 00
“ “ “ 200 “ “ 300 “	4 00
“ “ “ 300 “ “ 400 “	5 00

Vessels engaged in the coasting and fishing trade to be exempt from the payment of any fee.

*At Pictou, Pugwash, Wallace, Tatamagouche and Point  
Brule.*

One cent per ton on all vessels not under 40 tons.

*At Saint Mary's.*

For vessels exceeding 100 tons and under 150 tons,	\$1 00
For vessels exceeding 150 tons and under 250 tons,	2 00
For vessels exceeding 250 tons	4 00

Vessels engaged in the coasting and fishing trade, and all other vessels resorting to the harbor for shelter, wood, water or provisions, and not anchoring within the bar, to be exempt from any fee.

*At Antigonishe.*

The fees to be established by the sessions.

NOTE.—Sections 1 to 16 inclusive 34 and Schedule A. repealed by Chapter 54, Canada, 1873. Sections 37 to 43 inclusive repealed by Chapter 63, Canada, 1873. See too, Chapter 42, Canada, 1872, and Chapter 9, Canada, 1873.

## 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 persons for the purchase of such goods, or by way of pledge, lien or security for advances upon such goods or 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 in possession of goods or the title thereof empowered to sell or pledge them.

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

Agent's powers in cases of exchange of goods or their titles.

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 pledge 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.

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.

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.

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 shewn 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.

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 repayment 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.

Owner may redeem goods pledged.

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

Proceedings under this chapter not to affect other remedies at law or equity.



have had against the offender if such provisions had not been made.

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## CHAPTER 82.

OF BILLS OF EXCHANGE AND PROMISSORY NOTES:

*As amended by Chapter 10, 1865, Section 5.*

Damages and interest on protested bills of exchange.

1. A bill of exchange drawn by a person residing within the Province and returned protested shall, if drawn upon a person residing within the Province, be subject to six per cent. per annum interest from the date of the protest to the time of payment. If drawn upon a person in any part of North America without the Province, it shall be subject to five per cent. damages and six per cent. per annum interest from the date of the protest to the time of payment, and if drawn upon a person in any other country it shall be subject to ten per cent. damages and six per cent. per annum interest from the date of the protest to the time of payment.

Promissory notes negotiable; who may sue thereon.

2. A promissory note shall be assignable or endorsable in the same manner as an inland bill of exchange; and the payee or endorsee thereof, or the holder where the note is payable to bearer, may bring an action thereon in his own name.

Notes not payable in money presumed to be for a good consideration, but not negotiable; how recovered.

3. A note in writing for a sum certain payable otherwise than in money shall be held *prima facie* to be given for a valuable consideration, but shall not be negotiable. The amount of such note may be sued for and recovered as if the amount thereof were payable unconditionally in money.

No damages recoverable for non-delivery of articles mentioned in such note.

4. In an action brought upon such note the amount only payable thereunder shall be recoverable, without damages for the non-delivery of the articles enumerated therein.

Acceptance of bill of exchange must be in writing.

5. No acceptance of any bill of exchange, whether inland or foreign, shall be sufficient to bind or charge any person unless the same be in writing on such bill, or if there be more than one part of such bill, on one of the said parts, and signed by the acceptor or some person duly authorized by him.

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NOTE.—See Chapter 9, Canada, 1867, 13 Canada, 1870, and 10, Canada, 1872.

## CHAPTER 83.

## OF CURRENCY.

The treasury notes for twenty shillings each shall here-  
be computed at the public departments at three dollars and  
ty-nine cents each.

One pound  
treasury notes,  
how computed.

All judgments shall be entered in dollars and cents ;  
in case of any omission or mistake in such entries, any two  
ces of the peace where the judgment has been awarded by  
one or more justices, and a judge of the Supreme Court,  
e case of judgments entered therein, shall have power to  
fy such omission or mistake on such terms as shall appear  
nable and just.

Judgments to  
be entered in  
dollars and  
cents; mistakes  
how corrected.

Executions upon judgments now subsisting or which  
have been awarded or entered previous to the first day  
uly, in the year one thousand eight hundred and sixty, may  
ken out in pounds, shillings and pence, or in the corres-  
ing amount of dollars and cents, at the option of the judg-  
; creditor ; and any undersigned or accidental discrepancy  
een the amount of the judgment and execution may be  
ied by the justice or a judge of the court from which the  
ation issued on such terms shall appear to be reasonable  
just.

Execution on  
judgments  
prior to 1st  
July, 1860, how  
taken out.

Discrepancy  
how rectified.

## III.—OF DECIMAL ACCOUNTING.

All accounts to be rendered to the Provincial Govern-  
or to any public officer or department by any officer or  
ionary, or by any person receiving aid from the Province  
herwise accountable to the Government or Legislature  
of, shall continue to be rendered in dollars and cents.

Public accounts  
to be rendered  
in dollars and  
cents.

The holder of any undertaking or order for the pay-  
of money, which is designed to be, and to serve the like  
ose of notes or bills of bankers, or for circulating currency,  
her payable to a real or fictitious person or to the bearer  
of, or purporting to be transferable by endorsement or de-  
y, and whether made payable in gold or silver or other-  
may demand the full amount thereof in gold or silver  
y from the party by whom the same is payable ; and in  
lt of such payment the party shall pay to such holder

Bankers' notes  
and bills to be  
payable in gold  
or silver, and  
twelve per cent.  
interest after  
demand.

interest at the rate of twelve per cent. per annum upon the amount thereof from the day of such demand and refusal.

Such notes to be transferable by delivery and recoverable by holder.

11. Every such undertaking shall be transferable by delivery only, without endorsement or assignment; and every holder of such undertaking may recover the amount therein expressed as if the same were a promissory note made absolutely payable in gold or silver money.

Holder may tender such notes to maker as a payment.

12. The holder of any such order or undertaking being indebted to the person being the maker thereof, may tender the same to such maker in or towards payment of such debt for the full amount therein expressed.

Bank notes not issuable under twenty dollars. to be payable in specie. Penalty.

13. Any person issuing as circulating currency any promissory note, bank note or bill for a less sum than twenty dollars, shall for every such offence forfeit forty dollars; and any person issuing as circulating currency any promissory note, bank note or bill, expressed to be payable otherwise than in gold or silver money, shall for every such offence forfeit a like sum.

Treasury notes excepted; also, orders, bank cheques and promissory notes, not intended as currency.

14. The foregoing provisions shall not extend to treasury notes of this Province, nor to any undertaking or order not designed for circulation as currency, but *bona fide* drawn by any person upon his banker or any other person, nor shall they prevent any person indebted in a sum less than twenty dollars from making to his creditor a promissory note or undertaking to pay such sum.

NOTE.—Chapter 12, Canada, 1870, allows chartered banks to issue bank notes for any sum not less than four dollars. Chapter 4, Canada, 1871, repeals § 1, 2, 6 and 7.

## CHAPTER 84

### 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.

3. The quantity of grain or corn to be ground shall be ascertained by a sealed measure.

Quantity of grain, how ascertained.

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 taking or demanding illegal toll.

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.

Fine for refusing to grind, &c.; steam mills

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.

Millers to keep scales and weights in mills under penalty of twenty dollars.

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## CHAPTER 85.

OF THE REGULATION AND INSPECTION OF PROVISIONS, LUMBER,  
FUEL AND OTHER MERCHANDIZE :

*As amended by Chapter 10, 1868.*

### BREAD.

44. 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.

45. 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.

46. No person shall sell any bread that shall not be marked in accordance with the forty-fourth 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

Fine for selling unmarked bread.

every loaf not duly marked, not less than twenty cents nor more than one dollar.

Persons selling bread shall keep scales and weights.

47. 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.

Justices or constables authorized may seize bread unmarked or short of weight, as forfeited.

48. 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.

Fine for obstructing officer.

49. 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 selling bread short of weight.

50. 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 servants or journeymen offending.

51. 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.

Baker may be relieved from fines incurred by the wilful misconduct of servants.

52. 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 jail for a period not exceeding a month.

Loaves made to order, or weighing less than half a pound excepted.

53. 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 suits.

54. Prosecutions for breach of any such provisions shall be commenced within three days after the offence committed.

#### POTATOES, &c.

Vegetables how to be sold.

72. Potatoes and all edible roots shall hereafter be sold by weight.

#### TARE ON SUGAR.

Tare on sugar, how ascertained.

73. 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.

74 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.

Fine for not allowing tare on sale.

#### COAL AND SALT.

75. 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.

Coals, how sold.

76. All coal or salt sold from shipboard by retail in this Province shall be weighed or measured by officers appointed for the purpose.

Coal and salt to be measured.

77. 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.

Liable to forfeiture if delivered without being measured.

78. 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.

Fees of measurers.

79. 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.

Fine on measurers for misconduct.

80. 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.

81. 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 requested.

Proprietor, &c., giving false certificate; penalty.

82. 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.

Certificate delivered to collector.

83. 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.

#### HAY.

Hay, how weighed; weighers' fees.

88. 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 sessions as herein provided for, 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 court of sessions, on the recommendation of the grand jury, may from time to time regulate the rate to be received by weighers of hay in the several counties.

#### CORDWOOD.

Cordwood for retail; its quality and dimensions.

89. 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 from shipboard to be measured; measurers' fees.

90. 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.

Fine for selling without being measured.

91. Persons selling such cordwood without having the same surveyed and measured under the last preceding section shall forfeit the same or the value thereof.

Undimensioned wood to be rejected.

92. All sticks of such wood not of the requisite length shall be rejected by the measurer.

Provisions in case of rotten or crooked wood.

93. 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.

Fine for measurer violating his duty.

94. If any measurer shall violate his duty, he shall forfeit a sum not exceeding four dollars for every offence.

## LUMBER.

95. In the survey of boards there shall be four qualities, viz. :—

Boards to be of four qualities—their description.

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 to the edges with a saw; to be free from rots, wanings, 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.

96. 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.

97. All plank intended for exportation, except hardwood plank, shall be from ten to twenty feet in length, nine inches breadth, and three inches and one-eighth in thickness, and of the same quality as dimension deals.

Plank for exportation; their size and quality.

98. All ton timber for exportation shall be straight lined and squared, and with not more than one inch of wane on the edges, without offsets or joints, square, butted at both ends, and free from all marks of scoring, rots, splits or worm holes which may be detrimental to the same.

Ton timber for exportation; its size and quality.

99. Merchantable spruce or pine timber shall be sixteen feet, and hardwood timber ten feet in length at least, and at least ten inches square; and where it does not exceed sixteen feet in length, the ends shall be of equal size, and all in timber shall be measured by the girth, one quarter part thereof to be taken as the side of the square.

Merchantable spruce, pine and hardwood timber; their size and quality.

100. In the survey of shingles there shall be three qualities, viz. :

Shingles to be of three qualities; their descriptions.

No. 1.—Pine or cedar shingles not less than eighteen inches long, four inches wide, and three-eighths of an inch 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.

Clapboards; their length and description.

Lathwood; description of, and how measured.

Staves, their description and mode of calculation.

101. Clapboards shall be four feet four inches long, five inches wide, and half an inch thick at the back.

102. Lathwood shall be of fresh growth, straight rift, free from bark, heart and knots, and measured by the cord.

103. Hogshead staves shall be forty-two inches long, from three and a half to five and a half inches wide, and three quarters of an inch thick on the thinnest edge, and not more than one inch on the back.

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.

Timber, lumber and shingles purchased for exportation shall be as respectively described.

104. 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.

105. 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.

106. 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.

107. 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.

Surveyors' certificates; their effect; provisions in case of dispute.

108. The surveyor's fees shall in all cases be paid by 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 surveyor payable by seller; seller's duty on survey.

109. All timber, lumber and shingles, shall be surveyed and marked, as prescribed by this Chapter, before delivery on sale or shipment for exportation, and if any person shall violate this provision, he shall forfeit the article or the value thereof; but in the City of Halifax entire cargoes of lumber sea borne may be disposed of without the intervention of a surveyor between the first buyer and seller.

Timber, lumber and shingles forfeited if sold without being surveyed; cargoes in the city of Halifax excepted.

110. Upon the survey of shingles, clapboards and staves respectively, those which are deficient in quality or dimensions shall be rejected.

Shingles, clapboards and staves found defective to be rejected.

111. 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 and clapboards forfeited when offered for sale deficient in the marked quantity.

112. 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 timber, &c.

113. 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.

Limitation of actions.

114. All prosecutions under these provisions shall be commenced within twelve months from the time of the commission of the offence.

#### APPLES AND POTATOES.

Size of apple barrels.

115. 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.

Number of hoops.

116. 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.

Barrels to be branded.

117. 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.

Penalty for selling in small barrels.

118. 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 sustained thereby, to be recovered as an ordinary debt, and be liable to a fine of one dollar.

Not to affect flour barrels.

119. 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.

120. 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.

Sessions to appoint officers.

121. The general or a special sessions may appoint all inspectors and other officers necessary for carrying out the provisions of this Chapter.

NOTE. The omitted portions of this Chapter repealed by Section 20 of Chapter 6, Canada, 1873.

## CHAPTER 94.

OF THE COAST AND DEEP SEA FISHERIES:

*As amended by Chapter 35, 1866, and continued in force by Section 21, Chapter 60, Canada, 1868.*

1. Officers of the colonial revenue, Sheriffs, magistrates and any other person duly commissioned for that purpose, may go on board any vessel or boat within any harbor in the Province, or hovering within three marine miles of any of the coasts or harbors thereof, and stay on board so long as she may remain within such place or distance.

Revenue officers may board vessels hovering within three miles of the coast.

2. If such vessel or boat be bound elsewhere and shall continue within such harbor or so hovering for twenty-four hours after the master shall have been required to depart, any one of the officers above mentioned may bring such vessel or boat into port and search her cargo, and also examine the master upon oath touching the cargo and voyage; and if the master or person in command shall not truly answer the questions demanded of him in such examination, he shall forfeit four hundred dollars; and if there be any prohibited goods on board, then such vessel or boat, and the cargo thereof, shall be forfeited.

Proceedings where the master bound elsewhere refuses on notice to depart.

4. All goods, vessels and boats liable to forfeiture may be seized and secured by any such officers or persons so commissioned; and every person opposing them or any one aiding such opposition shall forfeit eight hundred dollars, and shall be guilty of a misdemeanor, and upon conviction be liable to imprisonment for a term not exceeding two years.

Vessels and goods forfeited liable to seizure; penalty for obstructing officers.

5. Goods, vessels and boats, seized as liable to forfeiture, under this Chapter, shall be forthwith delivered into the custody of the officers of the colonial revenue next to the place where seized, to be secured and kept as other vessels, boats and goods seized, are directed to be secured and kept by law, or into such other custody and keeping as the Governor in Council or the Court of Vice-Admiralty shall order. But in case of seizure under this Chapter, the Governor in Council may, by order, direct a stay of proceedings; and in cases of condemnation, may relieve from the penalty in whole or in part, and on such terms as may be deemed right.

Custody of vessels and goods seized.

In cases of seizure, Governor in Council may direct stay of proceedings, or relief from penalty.

6. All goods, vessels and boats condemned as forfeited under this Chapter shall, by direction of the principal officer of the

Condemned vessels and goods, how disposed of, and the proceeds, how applied.

colonial revenue where the seizure shall have been secured, be sold at public auction, and the proceeds of such sale shall be applied as follows: the amount chargeable for the custody of the property seized shall first be deducted and paid over for that service, one-half of the remainder shall be paid to the officer or person seizing the same without deduction, and the other half, after first deducting therefrom all costs incurred, shall be paid into the treasury of the Province; but the board of revenue may nevertheless direct that any vessel, boat or goods seized and forfeited, shall be destroyed or reserved for the public service.

Penalties and forfeitures, how prosecuted.

Vessels and goods to be re-delivered on security.

Suits, how brought and prosecuted; oral evidence admissible as to authority of seizing officers.

Burden of proof in case of seizure to rest with claimant.

Claims of property seized to be under oath.

Security to be given before claim entered.

Month's notice to officer before action.

7. All penalties or forfeitures hereunder shall be prosecuted and recovered in the Court of Vice-Admiralty.

8. If any goods, vessel or boat shall be seized as forfeited under this Chapter, the Judge of the Vice-Admiralty with the consent of the person seizing the same may order re-delivery thereof, on security by bond to be made by the party with two sureties to the use of Her Majesty. In case the property shall be condemned, the value thereof shall be paid into the court and distributed as above directed.

9. All suits for the recovery of penalties or forfeitures shall be in the name of Her Majesty, and shall be prosecuted by the Advocate General, or in case of his absence by the Solicitor General. If a dispute arise whether any person is authorized to seize under this Chapter, oral evidence may be heard thereupon.

10. If any seizure take place under this Chapter, and a dispute arise, the proof touching the illegality thereof shall be upon the owner or claimant.

11. No claim to anything seized under this Chapter and returned into the Court of Vice-Admiralty for adjudication, shall be admitted unless the claim be entered under oath, with the name of the owner, his residence and occupation, and the description of the property claimed; which oath shall be made by the owner, his attorney or agent, and to the best of his knowledge and belief.

12. No person shall enter a claim to anything seized under this Chapter until security shall have been given in a penalty not exceeding two hundred and forty dollars to answer and pay costs occasioned by such claim; and in default of such security the things seized shall be adjudged forfeited and shall be condemned.

13. No writ shall be sued out against any officer or other person authorized to seize under this Chapter for anything done thereunder until one month after notice in writing, delivered to him or left at his usual place of abode by the person intending to sue out such writ, his attorney or agent; in which

notice shall be contained the cause of action, the name and place of abode of the person who is to bring the action, and of his attorney or agent; and no evidence of any cause of action shall be produced except such as shall be contained in such notice.

14. Every such action shall be brought within three months after the cause thereof has arisen.

Limitation of action against seizing officers.

15. If on any information or suit brought to trial under this Chapter on account of any seizure, judgment shall be given for the claimant, and the judge or court shall certify on the record that there was probable cause of seizure, the claimant shall not recover costs, nor shall the person who made the seizure be liable to any indictment or suit on account 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, shall not recover more than three and a half cents damages nor any costs of suit, nor shall the defendant be fined more than twenty cents.

Certificate of probable cause of seizure shall prevent the recovery of costs.

16. The seizing officer may within one month after notice of action received, tender amends to the party complaining or his attorney or agent, and plead such tender.

Amends may be tendered within one month.

17. All actions for the recovery of penalties or forfeitures imposed by this Chapter must be commenced within three years after the offence committed.

Limitation of actions for penalties, &c.

18. No appeal shall be prosecuted from any decree or sentence of any court in this Province, touching any penalty or forfeiture imposed hereby, unless the inhibition be applied for and decreed within twelve months from the decree or sentence being pronounced.

Appeals, within what time to be prosecuted.

19. All coasting vessels under sixty tons burthen owned in this Province and engaged in the coasting trade thereof, shall be furnished with a narrow piece of plank or iron affixed to the bottom of the keel and level therewith, extending aft at least six inches beyond the aperture between the stern post and rudder, and well secured on the keel. But this section shall not extend to vessels in which the main or false keel extends six inches beyond the aperture between the stern post and rudder.

Coasting vessels to have a narrow piece of plank or iron extending aft of the stern post.

20. Any owner or master of a coasting vessel not so furnished or built, running foul of any net set off the harbors, bays and rivers of the coast, shall upon due proof thereof forfeit twenty dollars, to be recovered by the party injured to his own use as a private debt; leaving to the party aggrieved, nevertheless, his rights at common law for any further damage.

Forfeiture for destroying nets, where coasters are not so provided.

21. In this Chapter "vessels" shall include ships; and "harbors" shall include ports, bays and creeks.

Definition of terms.

Agreement to be entered into between master and crew.

Terms of agreement.

Penalties for desertion.

23. The master of any vessel registered and belonging to this Province, and bound from any port therein, to be employed in the deep sea fishery, shall before proceeding on such fishing voyage enter into an agreement in writing with every person on board, apprentices excepted, which agreement shall express whether the same is to continue for one voyage or for the fishing season; and shall also express that the fish or the proceeds of such fishing voyage or voyages which may appertain to the crew of such vessel, shall be divided among them in proportion to the quantity or number of fish which they may respectively have caught; which agreement in addition to the signatures of the master and crew shall be countersigned by the owner of such fishing vessel, or his agent, and shall be as nearly as possible in the form given in the annexed schedule.

24. Any person having engaged for a voyage or for the fishing season, as before provided, who shall, while the agreement therefor continues in force, desert or absent himself from the vessel in which he shipped, without leave of the master, shall be liable to the same penalties and forfeitures imposed on the like offences under Chapter Seventy-Five of the Revised Statutes, Third Series, and every master of a fishing vessel taking any person on a deep sea voyage without entering into the before required agreement, shall be liable to the penalty imposed on that offence by the same Chapter.

*Schedule in this Chapter referred to.*

Form of agreement.

An agreement made in pursuance of Chapter Ninety-Four of an act of the General Assembly of Nova Scotia, passed in the twenty-seventh year of the reign of Her Majesty Queen Victoria, entitled "An Act for Revising and Consolidating the General Statutes of Nova Scotia," between \_\_\_\_\_, master of the ship \_\_\_\_\_, of the port of \_\_\_\_\_, of the burthen of \_\_\_\_\_ tons, and the several persons whose names are subscribed hereto.

It is agreed by and on the part of the said persons, and they severally hereby engage to serve on board said ship in the capacities set opposite their respective names, on a fishing voyage from the port \_\_\_\_\_ to \_\_\_\_\_; [*here the intended voyage is to be described, and the duration of the same, and the nature of the same as nearly as can be done, and if the same is to continue for the fishing season,*] and back to the port of \_\_\_\_\_; and the said crew agree to conduct themselves in an orderly, faithful, honest, careful and sober manner, and to be at all times diligent in their respec-

ve duties and stations, and to be obedient to the lawful commands of the master in everything relating to the said ship, and the materials, stores and cargo thereof; in consideration of which services to be duly, honestly, faithfully and carefully performed, the said master doth hereby promise and agree with the said crew; (*here insert the particular agreement with reference to the division of the fish among the sharersmen at end of voyage.*) In witness whereof the said parties have hereto subscribed their names on the days against their respective signatures mentioned.

Date and time of entry.			Man's name.	Age.	Place of birth.	Quality.	Amn't of shares.	Sureties.	Witness to execution.
Day.	Month.	Year.							

NOTE.—Section 3 repealed, and various new provisions made by Chapters 60 and 61 Canada, 1868. See too Chapter 2, Canada, 1872.

## CHAPTER 95.

### OF RIVER FISHERIES.

*amended by Chapter 35, 1865, and Chapter 36, 1866, and continued in force under Section 21 of Chapter 60, Canada, 1868.*

1. Hereafter no salmon shall be taken in any of the rivers this Province westward of the harbor of Halifax between the thirty-first day of July and the first day of March; nor in any river running into the Bay of Fundy, nor in any river to the Island of Cape Breton, nor in any river to the eastward of Halifax Harbor, between the fifteenth day of August and the first day of March, except in salt water below low water mark, and in salt water not later than the twentieth of October. Any person taking any salmon in any of the rivers of this Province within the times specified shall be liable to a penalty not exceeding forty dollars for every salmon taken by him.

Time for taking salmon.

Penalty.



Fisheries on rivers running through private lands to be regulated by sessions.

Sessions' orders to extend to centre of channel of river dividing counties.

Sessions may make orders for prevention of traps, &c., being set for destroying fish.

Penalties.

Bag nets not allowed.

Time when nets shall not be set.

Spearing or sweeping forbidden.

Nets, how set.

Not to be within one hundred yards from another, nor within one eighth of a mile from mill, &c.

Not to extend more than one third across river.

Penalty for violation of last three sections. Forfeiture; trial of offenders; appeal.

2. The sessions shall annually appoint such and so many places on the rivers and streams, as may be attended with the least inconvenience to the owners of the soil or the rivers, as resorts for the purpose of taking fish; but the same and the enactments herein contained shall not extend to any species of fish taken from the sea, except salmon, bass, shad, alewives, gaspereaux, trout and small mackerel.

3. In cases where a river shall be the dividing line between two counties, the orders and regulations of the sessions in each county shall have force and effect only to the centre of the channel of the river being such dividing line.

4. The sessions shall have power to make orders, for the prevention of traps or such other contrivances as they may consider objectionable being set for catching or destroying fish in any of the bays, harbors, rivers, streams, or creeks in this Province, or on the shores thereof, to be enforced by penalties not exceeding forty dollars for each breach thereof.

5. No bag nets shall be used for the purpose of taking salmon within any river or harbor, not within a mile from the mouth of any river; and no nets shall be set or placed or allowed to remain set or placed from one hour before sunset on Saturday night until an hour after sunrise on Monday morning.

6. No person shall by spearing or sweeping with net or seine take or attempt to take any salmon in any river, stream, lake or water course; and nets for the taking of salmon or any other fish shall be set and placed only on one side of such river, stream, lake or watercourse.

7. No stake, seine, wear, net or other contrivance for taking fish, shall be set or placed within one hundred yards from where some other stake, seine, wear, net or other contrivance for taking fish is previously set or placed, nor within one eighth of a mile next below or above any mill or dam erected across or partially across any such river, stream or watercourse; and no seine, net, or other contrivance for taking fish shall extend more than one third of the distance in a straight line across such river, stream or watercourse.

8. Any person who shall violate any provision of the last three sections shall forfeit a sum not exceeding forty dollars; and all spears, implements, canoes, boats, nets, seines, wears and other contrivances used or employed in, about or preparatory to the taking of salmon or any other fish contrary to the preceding sections, or to any order of sessions made or to be made thereunder, shall be liable to forfeiture, and may be seized by any person and detained until the trial of the offender, when they may be declared forfeited and become the property of the person prosecuting; if, however, upon

appeal from the judgment of the justices, the owner or possessor of the articles so declared forfeited shall give sufficient security by bond with sureties to pay the prosecutor the value thereof and the amount of any penalty that may have been imposed with the costs then incurred and thereafter to be incurred in case the judgment appealed from shall be confirmed, then such owner or possessor shall be entitled to their immediate restoration.

9. Any person finding a net, seine or wear set or placed contrary to the provisions of this Chapter or of such order of sessions may destroy the same: provided, nevertheless, that no person shall be allowed in any action, indictment or other proceeding against him to justify the destruction of or injury to any net, seine or wear, under the authority of this section, unless such person shall, within one week after he shall have done any such act, post up in a conspicuous place in the neighborhood, and also file in the office of a neighboring justice of the peace, a notice signed by him, acknowledging the act and stating the time and place of doing the same, and also the address, addition and place of residence of the party subscribing the same.

Nets illegally set, may be destroyed.

10. Every person discovered at night with a spear and torch or a torch only in or about any river, stream, lake or watercourse above the rise and fall of the tide, either in a boat or canoe or otherwise, and apparently equipped for taking or spearing salmon, shall be considered in the act of spearing salmon, and the burden of disproving the same shall be on the party so discovered.

Persons equipped by night for fishing, to be considered in the act of fishing.

11. The owner or the occupier of any mill to which any dam, lock or obstruction made or to be made on or across any river, resorted to by salmon or gaspereaux, is appurtenant, who shall not during such periods while the fish are passing up from and returning to the sea, as shall be prescribed by the regulations of sessions, or, in case there are no regulations on the subject, as shall be fixed by the river inspector, when no such regulation shall be made by the sessions or river inspector, then within the period prescribed in the first section of this Chapter, have and keep open a waste gate or slope sufficient to allow such fish to pass and repass, shall be liable to a penalty not exceeding forty dollars.

Owner of mill to keep open waste gate, &c.

Penalty.

This section shall not apply to the County of Halifax.

Exception.

12. When such owner or occupier having a sufficient waste gate or slope shall keep the same shut or otherwise impede the passage of such fish during such periods, he shall be liable to a penalty not exceeding forty dollars for every time he shall close the said passage.

Penalty for closing passage.

13. When such owner shall have had ten days notice in writing from the river inspector or any justice of the peace of

Penalty for refusing to construct gates, &c.

the want or insufficiency of such waste gate or slope, and shall have for that space of time neglected or refused to construct such waste gate or slope, he shall be liable to a penalty of one hundred dollars; and if he shall neglect or refuse to construct such waste gate or slope for ten days after such penalty shall have been inflicted, the justices inflicting such penalty, or any judge of the Supreme Court may, upon sufficient proof of such neglect or refusal, order the Sheriff of the county to prostrate and wholly destroy the said milldam; and the expenses attendant upon such application and of the removal of the said dam shall be taxed by the said justices or by a judge, who may direct an execution to issue therefor against the said owner.

Upon continued refusal, milldam may be destroyed.

14. The sessions of each county shall at the first meeting after the passing of this Chapter by a memorandum in writing, declare specifically the rivers and streams within the county to which the provisions of this Chapter shall not apply.

Sessions may declare what rivers exempt.

15. The grand jury in each county shall present and the sessions shall appoint in the same manner as county and township officers are appointed, for each river or part of a river which the sessions shall make into a separate district or jurisdiction, an officer to be called inspector of river fisheries, to be paid such salary as the grand jury and sessions may allow, who shall be sworn into office as other township officers are sworn, and who shall be liable and bound to protect the fisheries and carry out the provisions of this Chapter on the river or stream for which he is so appointed.

Sessions to appoint inspectors

Salary.

To be sworn.

Duties of, &c.

16. The grand jury and sessions shall appoint officers to be inspectors of bays, harbors, creeks and streams, set off into districts, or of either of them, in the same mode as inspectors of river fisheries are provided to be appointed by the preceding section.

Grand jury and sessions shall appoint inspectors of bays, harbors, creeks, and streams, &c.

Penalty for neglecting to be sworn.

For neglect of duty.

Stop gates to be made in dams.

Fish-way required in all dams.

Fish ladder—description of, and how placed.

17. Any river inspector neglecting to be sworn into office on receiving notice of his appointment, shall be liable to a penalty of ten dollars: and any such river inspector neglecting his duty after being sworn into office shall be liable to a penalty of forty dollars.

18. For the protection of the young fish coming down the rivers of the Province in the fall of the year, sufficient stop gates shall be made in all dams and obstructions across the rivers sufficient for such young fish to pass through.

19. In all dams or obstructions now erected, or hereafter to be erected, across any river or stream frequented by salmon or gaspereaux, either one third of the main channel shall be left open, or a fish ladder shall be placed and kept therein.

20. Such fish ladder shall have a slope of not more than

foot in seven, shall have an opening of not less than three in width at the top of the dam, and shall be so placed there shall at all times be at least one foot in depth of or running over the mouth thereof; the bottom of such er to be water-tight and to be covered with stone, and at y six feet pieces of wood or stone to be fastened at right es to the sides thereof, and to be secured to each side nately, so as to make the current of water flow from side de,—the openings to be not less than one foot in width, the pieces of wood or stone so jutting out from the sides ; not less than two feet in height; the lower end of such ladder to be secured to the bottom of the main channel e river, or otherwise shall be conformable to the model e fish ladder now deposited in the office of the Provincial etary.

1. Whenever the words "waste gate" or "slopes" oc- Definition of in this Chapter, the same shall be construed to mean the terms. ladder described in section 20.

2. Every mill owner who shall not erect and maintain Penalty for not itable and efficient fish-way as hereinbefore provided, providing fish- be liable to a penalty of one hundred dollars; and if way. dam now existing or hereafter to be erected, shall be up contrary to this Chapter, the same may be prostrated or the terms and provisions of section 13.

3. The four next preceding sections shall only apply to Application of County of Halifax and to Clyde River in the County of sections. burne.

4. The General or Special Sessions of the County of Halifax county Sessions to make regulations for fish passing through Shubenacadie Canal. fax shall make such regulations for the passing of fish igh the dams and locks of the Shubenacadie Canal as shall deem proper, to be enforced by penalties not ex- ing forty dollars for each breach thereof.

5. All prosecutions for penalties under this Chapter Prosecutions for penalties: how, had, &c. be had either before two justices of the peace or before lge of the Supreme Court as a summary suit; and any n may prosecute for any violation of this Chapter or of order of sessions made thereunder; and the penalties r recovered shall go to the prosecutor.

6. Where proceedings are before two justices the fol- Process to state complaint. lowing form of summons may be used, but any process which substantially state the violation complained of shall be ient.

*Form of summons.*

To any of the constables \_\_\_\_\_,  
 you are hereby commanded to summon A. B. of \_\_\_\_\_, Summons.  
 of the County of \_\_\_\_\_, to appear before us at \_\_\_\_\_, on

the ——— day of ——— next, to answer to the suit of C. D. who says that the said A. B. hath violated the provisions of the acts made for the protection of the river fisheries in not providing a sufficient waste gate or slope in his milldam, or in not keeping the waste gate of his milldam open, or in allowing the waste gate or slope of his milldam to be so obstructed as to prevent the free passage of fish, in unlawfully setting nets, wears or seines, or in spearing salmon.

Witness our hands this ——— day of ———, A. D. 18—.

E. F. (seal.)

G. H. (seal.)

Conviction.

The conviction may be in the following form:—"The within named A. B. having been duly summoned under the annexed writ, and having been duly convicted of having violated the Chapter of the Revised Statutes, Third Series, 'Of River Fisheries,' as therein mentioned, we hereby give judgment for the plaintiff for the sum of ——— with his costs."

E. F. (seal.)

G. H. (seal.)

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## CHAPTER 116.

### OF THE LAW OF COPYRIGHT.

Copyrights,  
how secured.

1: The author of any map, chart or book printed, or of any print engraved within this Province, who has not transferred the copyright thereof, and any other person who has legally acquired the copyright of any such map, chart, book or print, in order to publish the same, shall have the sole right of publishing such map, chart, book or print, for the term of twenty-one years from the recording the title or the entry thereof in the office of the Secretary of the Province; and the author of any map, chart, book or print, not published within the Province, his executors, administrators or assigns shall have the sole right of publishing such map, chart, book or print, for the like term; and if at the expiration of such term, the author of any such map, chart, book or print, shall be living, the same right shall be continued to him for the further period of fourteen years; but he shall cause the title thereof to be a second time recorded and published, within six months before the expiration of the first term of twenty-one years; and no person shall be entitled to any right hereunder

unless he shall be resident within the Province at the time of his application therefor.

2. If any other person after the recording of the title of any map, chart or book, and publishing the same within the times limited, shall print or import from any other country copies of such map, chart or book without the consent of the author, and proprietor thereof first had in writing, signed in the presence of two witnesses, or expose to sale any such copy of such map, chart or book, such offender shall forfeit all copies of such map, chart or book, and all sheets, being part of the same, to the author and proprietor thereof, who shall forthwith destroy the same; and every such offender shall forfeit not less than twenty cents, nor more than one dollar for every sheet found in his possession, to whomsoever will sue for the same.

Penalties for infringing copyright by importation.

3. If after the recording the title and entering of any print, any person whosoever shall engrave, etch or work, or in any manner copy or sell in the whole or in part, by copying, varying, adding to or diminishing from the main design, or shall print, reprint or import for sale any such print, or any part thereof, without the consent in writing of the proprietor thereof, signed in the presence of two witnesses, or knowing the same to be so printed, reprinted or imported without the consent of the proprietor, shall publish, sell or expose the same to sale, such offender shall forfeit the plates on which such print shall be copied, and all sheets of such print, and all parts thereof to the proprietor of the original print, who shall forthwith destroy the same; and such offender shall forfeit the sum of four dollars, for every print found in his custody, either printed, published, or exposed to sale, or otherwise disposed of, to whomsoever will sue for the same.

Penalties for infringing copyrights by imitation or otherwise.

4. No person shall be entitled to benefit under these provisions in cases where any map, chart, book or print has been already published, unless a printed copy of the title of the same shall before publication be deposited in the Secretary's office, who shall record the same in a book kept by him for that purpose, in the words following, and give a copy thereof under his hand to the author or proprietor if required:—

A printed copy of the title to be registered in the provincial secretary's office before publication.

“Province of Nova Scotia.

“Be it remembered that on this — day of —, A D. 18—, A. B. of —, in the said Province, has deposited in this office the title of a map, [*chart, book or print, as the case may be.*] the copyright whereof he claims in the words following: [*here insert the title,*] in conformity with Chapter one hundred and sixteen of the Revised Statutes.

C. D., Provincial Secretary.”

For which certificate the Secretary shall receive one dollar,

and one dollar for every copy; and the author or proprietor shall cause a copy of such record to be inserted at full length in the title page, or in the page following the title page of such book; and if a map, chart or print, the following words shall be impressed on the face thereof: "Entered according to law on the — day of —, 18—, by A. B., of —."

Penalty for illegally inserting an entry as registered.

5. If any person not having legally acquired the copyright shall print or publish any map, chart, book or print, and shall insert therein or impress thereon that the same has been entered according to law, or words purporting the same, he shall forfeit four hundred dollars, to be applied as hereinafter directed.

Limitation of actions.

6. Actions under this Chapter shall be commenced within three years from the time when the cause of action accrued.

NOTE. This chapter repealed by section 19 of chapter 54, Canada, 1868,—the Copyright Act of 1868; except that the above sections are by section 23 continued in force as to unexpired copyrights acquired before the twenty-second day of May, 1868.

## CHAPTER 117.

### OF PATENTS FOR USEFUL INVENTIONS.

Letters patent, how and by whom to be obtained.

1. Whenever any person resident in the Province, and who shall have resided therein for the space of one year previous to his application, shall apply to the Governor, alleging that he has discovered any new and useful art, machine, manufacture or composition of matter or any new or useful improvement thereon not heretofore used or known, and pray that a patent may be granted him for the same, the Governor may direct letters patent to be issued, reciting therein the allegations of such petition, and giving a short description of such invention, and shall thereupon grant to the person so applying for the same and his representatives for a term not exceeding fourteen years the exclusive right of making, using and vending the same to others, which letters patent shall be good and available to the grantee, and shall be recorded in the Secretary's office in a book for that purpose, and shall then be delivered to the patentee.

Patentees of improvements not to use any original invention; original patentee not to use the improved patent.

2. Where any letters patent shall be obtained by any person for any such invention, and thereafter any other person shall discover any improvement in the principle or process of any such invention, and shall obtain letters patent for the exclusive right of such improvement, the person who shall obtain such new patent shall not make, use or vend the original

invention, nor shall the original patentee make, use or vend any such improvement.

3. The simple change of the form or proportions of any machine or composition of matter shall not be deemed a discovery or improvement within the meaning of this Chapter. Changes of form or proportions not deemed an improvement.

5. Any person may receive from the Secretary's office any copy of such letters patent, or of the petition whereon the same were granted, or of any paper or drawing connected therewith, on paying ten cents a folio, and a reasonable fee for every copy of such drawings. Copies of letters patent and drawings, how charged for.

8. Before any person shall obtain any letters patent he shall deliver into the Secretary's office an intelligible and exact description of such invention, and of the manner of using, or process of compounding the same, so as to enable any person skilled in the science of which it is a branch to make and use the same; and in case of any machine, shall deliver a model, and explain the principle by which it may be distinguished from other inventions, and shall accompany the whole with drawings and written references where the case admits of drawings, or with specimens of the ingredients sufficient for the purpose of experiment where the invention is a composition of matter, which description, signed by such person and attested by two witnesses, shall be filed in the Secretary's office, and copies thereof, certified by the Provincial Secretary, shall be competent evidence in all courts where matters concerning such letters patent may come in question; but the Governor may upon special grounds being shewn dispense with the delivery of the model at the Secretary's office if he shall deem it right to do so. Descriptions, explanations and models to be deposited in the provincial secretary's office.

9. Any patentee may assign all his right in such invention and discovery to any person; and the assignee thereof, having recorded such assignment in the Secretary's office, shall stand in the stead of the original patentee as well as regards all his rights as all his liabilities; and the assignee of any such assignee shall also be considered to be in the stead of the original patentee. Patentee's rights may be assigned; assignments to be recorded.

10. Whenever any letters patent shall be granted to any person, and any other person, without the consent of the patentee or his representatives first had in writing, shall make, use or sell the invention or discovery whereof the exclusive right is secured to such patentee, the person so offending shall be answerable to him or his representatives in damages. Actions for illegally using or selling a patent.

11. The defendant in such action may give this Chapter and every special matter in evidence to prove that the specification filed by the patentee does not contain the whole truth relative to the invention or discovery alleged to have been made by him, or contains more than is necessary to produce Defence, how pleaded, and what may be given in evidence.



the described effect, which concealment or addition shall fully appear to have been fraudulently made, or that the invention or discovery so secured by letters patent was not originally discovered by the patentee, but had been in use or had been described in some public work anterior to the supposed invention or discovery of such patentee, or that such patentee had surreptitiously obtained such letters patent for the invention or discovery of some other person, in either of which cases, upon proof thereof, the verdict shall be found, and judgment entered thereon for the defendant with costs, and such letters patent, by the court, shall thereupon be adjudged void.

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NOTE.—This Chapter was repealed by Chapter 11 Canada, 1869, Section 62; but all rights acquired, and penalties or liabilities incurred under the foregoing sections previous to the twenty-second day of June, 1869, are reserved and continued. See also Chapter 26 Canada, 1872.

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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 incorporated in the Fourth Series.

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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.

1. The Judge in Equity for the time being shall be the Judge Ordinary of the Court for Divorce and Matrimonial Causes.

Temporary appointment.

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.

4. The present Registrar shall continue in office ; and on any vacancy occurring the Governor shall appoint the Registrar of the Court. Registrar.

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 courtesy 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 decision.

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 or reverse the decree or remit the case to the Court, to be dealt with as the appeal court shall direct. Appeal to supreme court.

Parties may marry again.

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.

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

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.

Rules of evidence same as in supreme court.

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 proceeding; by a wife by reason of adultery, coupled with cruelty, nothing in the forty-fourth or forty-sixth sections 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.

In cases of cruelty, husband and wife competent witnesses.

Who guilty of perjury.

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.

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.

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*.

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.

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.

Proviso.

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## CHAPTER 129.

OF STIPENDIARY OR POLICE MAGISTRATES:

*As amended by Chapter 6, 1865, Section 1.*

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 divisions.

Police division.

2. Such committee, if approving thereof, shall assign the limits, and assign a name to any such proposed division, 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

Proceedings to set off same.

sessions, but such notice shall not be required on reporting any application from the town of New Glasgow or Truro ; 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.

Report of committee, how approved.

3. Any such report may be approved of by the grand jury and confirmed by the court, or otherwise 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 : 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. On such report being approved and confirmed as aforesaid, 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.

Division created.

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, &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, &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 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 shall also 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.

Punishment, fines, &c.

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.

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 action.

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.

Court, when held, &c., arrest of parties remanded, bail, &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.

All persons to assist constable.

Fine.

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 rateable inhabitants of the police division, in the same manner as poor rates are collected.

Salaries.

16. The Clerk of the Peace for the county shall make out the collector's roll for the police division, and the same shall be collected by a collector for the police division, to be approved by the sessions in the same manner as other county officers.

How collected.

Sessions may  
make regula-  
tions.

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 magis-  
trate in civil  
matter.

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 Pictou.

20. The seventeenth clause shall be applicable to the police court for the Town of Pictou ; 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.

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## CHAPTER 137.

OF THE RELIEF OF INSOLVENT DEBTORS.

*As amended by Chapter 4, 1868.*

Commissioners  
appointed, how.

1. Commissioners for giving relief to insolvent debtors shall be appointed by the Governor in Council.

Prisoner to ex-  
hibit petition,  
and schedule  
annexed.

2. Where any person imprisoned upon any writ of meane process, execution or attachment for non-payment of money, issuing out of the Supreme Court, shall desire to take the benefit of this Chapter, he shall exhibit a petition to a judge of the Supreme Court, or to two commissioners, praying for his discharge. The petition shall be accompanied by a schedule of all the property, real and personal, of the debtor, 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.

3. The judge 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.

Summons thereupon to issue.

4. True copies of the summons and schedule 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 shewing 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.

Copy of summons and schedule, how served; time from date of service till return to be proportioned to distance.

5. In cases where the insolvent debtor is imprisoned under process issued out of a court of justices of the peace, or that of any stipendiary magistrate, 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 where plaintiff non-resident, in cases out of justice's court, &c.

6. At the time appointed the judge or commissioners shall, if desired by the creditor, administer an oath to the debtor in the following form:

Oath to be administered to prisoner 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 or commissioners shall give an order for the discharge of the debtor, unless in the cases hereafter provided for, upon the debtor's making an assignment to the creditor in trust for the payment of the debt, of his real and personal property, upon his taking and subscribing an oath to the following effect:

Order for discharge upon assignment made and oath taken; form of oath; confession may be required in case of mesne process.

"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 the



wearing apparel and bedding for me and my family, and the tools or instruments of my trade or calling, not exceeding forty dollars in the whole; 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."

The taking of which oath may be waived by the creditor; and in case of imprisonment under mesne process, if the judge or commissioners are satisfied of the existence and amount of the debt, the debtor shall sign a confession of judgment therefor, and shall do such other acts as the judge 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 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.

Prisoner may be remanded on affidavit.

7. If the creditor, or in his absence his attorney or agent, shall forthwith, in the presence of the judge 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 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, prisoner 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 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 or commissioners shall be of opinion that such tort was wilful and malicious, the judge 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, or any two commissioners.

11. Where the judge or commissioners shall remand the debtor for fraud, such judge 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.

When remanded for fraud witnesses fees to be taxed against debtor.

12. Where the debtor is imprisoned under a *capias* or execution issued by a justice or justices of the peace, any two justices shall possess the same powers in respect to the relief of insolvent debtors as a judge.

Two justices may relieve in case of process issuing out of justice's court.

13. In cases where the hearing shall be had before commissioners or justices of the peace, the debtor shall be entitled to an appeal; and if the creditor, or in his absence his attorney or agent, shall demand an appeal, and 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, or to that effect, the commissioners or justices shall grant such appeal and remand the debtor.

Appeal to be had by either party.

14. The Supreme Court shall be the court of appeal, if it shall be sitting within the same county at the time the order appealed from was made, or if such sitting shall be held within ten days from the making of such order. When such shall not be the case, then any judge of the Supreme Court, if within such county; and in case a judge shall not be present, then a special sessions of the peace shall be the court of appeal. The special sessions shall be summoned by the Prothonotary, and be held within three days, and shall consist of any three justices of such county not concerned in the making of the order.

Supreme court, a judge thereof, or a special sessions, to be the court of appeal.

15. The court of appeal shall hear and determine such appeal, and make such orders therein from time to time as it shall deem proper, such orders being not inconsistent with this Chapter.

Powers of the court of appeal.

16. The judge, commissioners, justices, and the court of appeal, shall return to the Supreme Court of the county all the papers connected with their proceedings on such applications and appeals.

Papers to be returned to the supreme court.

17. Upon receiving an order to that effect from the judge, 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.

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 *bona fide* holder without notice, may nevertheless be levied upon for the debt under execution issued on the same judgment.

Property of debtor liable for debt, after his discharge.

19. When any person shall be discharged under the pro-

Sheriff's fees, who liable

therefor on a discharge.

visions 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 commissioners and justices, for services in connection with the relief of insolvent debtors.

Penalty for refusal to act.

21. If any commissioner or justice on being tendered the above fees shall refuse or neglect to sign the order and attend the examination of the insolvent, he shall forfeit the sum of forty dollars, to be recovered by the insolvent or any other person who will sue for the same as a private debt.

SCHEDULE OF FEES.

Each commissioner, when the process issued out of Supreme Court, on signing order.....	\$1 00
Each justice, when process issued by justices, on signing order.....	0 50
If proceeding adjourned, same fees each day of attendance.	
Each commissioner on signing final order.....	0 50
Each justice on signing final order.....	0 25

NOTE.—This Chapter repealed as to traders by Chapter 16, Canada, 1869 — The Insolvent Act of 1869.



CHAPTER 147.

OF PETTY OFFENCES, TRESPASSES, AND ASSAULTS:

*As Amended by Chapter 1, 1865, Section 15.*

Larcenies under §100, and felonies by juvenile offenders, how tried.

1. A court of general or special sessions in any county or district at which not less than five justices shall be present, may, in a summary way, hear and try all larcenies when the value of the property stolen shall not exceed one hundred dollars, and may hear and try trespasses and felonies committed by juvenile offenders under the age of fourteen years, excepting only capital felonies: provided that such trials shall take place at the court-house of such county or district.

Exceptions. Proviso.

Proceedings after arrest of prisoner.

2. When any person has been arrested and committed to jail by warrant for any offence triable under the first ten sections of this Chapter, the jailer shall forthwith notify the

Sheriff thereof, who shall give notice of the same to the Custos, and such Custos shall direct the Clerk of the Peace to summon a special sessions to meet at a day to be named by him sufficiently distant to permit notice to the prisoner as hereinafter named, and the Clerk of the Peace shall forthwith, on receipt of such direction, convene such special sessions, and notify the prisoner of the day named for his trial, at least eight days previous to such special sessions.

3. The justices in general or special sessions as aforesaid shall have power to punish by fine or imprisonment, or both, with or without hard labor, as they shall see fit, but in no case shall they be allowed to fine beyond forty dollars, or to imprison beyond six months, and that only in the county or district jail. Punishment.

4. Any party feeling aggrieved by the sentence of such justices in general or special sessions, may appeal to the Supreme Court, or a judge, who may rehear the case, and make such order therein as justice shall require; but offenders convicted before the justices in general or special sessions shall not be allowed to escape punishment from any mere informality in the proceedings, and no relief shall be allowed unless it shall be made to appear by affidavit that injustice would otherwise be done. Appeal.  
Informality not to affect proceedings.

5. The proceedings up to the hearing before the justices in general or special sessions shall be by information and summons or warrant, as in the first section of Chapter one hundred and seventy-two of the Revised Statutes, Third Series, and the hearing and all subsequent proceedings shall be the same as in civil cases, except that subpoenas and other writs shall be in the name of the Queen for the defendant as well as the plaintiff. Proceedings before justices.

6. All constables and peace officers shall be compelled to execute writs and process, as in other cases of proceedings at the suit of the Crown. Writs, &c., how executed.

7. The justices in general or special sessions shall make their conviction and sentence in writing, and shall furnish a copy thereof to the constable or other officer, who shall deliver the same to the jailer in case of a sentence of imprisonment. Conviction.

8. No fees shall be paid or received under the foregoing sections, but officers and witnesses shall be entitled to remuneration as in other criminal cases. Fees.

9. In the case of incorporated counties or districts, the powers conferred under the foregoing sections shall be exercised by the monthly municipality courts. Incorporated counties and districts.

10. The foregoing sections shall not extend to the City of Halifax. Limitation of Chapter.

Sessions to make regulations respecting horses, &c., going at large.

Penalty for violating regulations.

A justice to have jurisdiction over trespasses by horses, &c., to \$12.

Replevin may be granted by Justice.

Form of writ.

Cause to be tried as in other cases.

Penalty for damaging or defacing a common.

Penalty for injuring ornamental trees on public roads.

Penalty for trespassing on cultivated enclosures.

Penalty for injury to trees.

11. The sessions shall make regulations for preventing trespasses by horses, asses, mules, cattle, sheep, swine, or goats going at large.

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.

14. The justice shall grant replevin where required upon security being given for prosecuting the same with effect within seven days.

15. The writ of replevin shall be in the following form:—

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.

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.

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.

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.

20. If any person shall illegally cut down or injure any tree growing on crown or private land, or shall illegally carry 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.

Imprisonment.

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.

The above penalties to be cumulatory remedies.

22. The offences enumerated in sections seventeen, eighteen, nineteen and twenty, are hereby declared to be under the jurisdiction of one or more justice or justices of the peace according to the amount of penalty sought to be recovered.

Offences in sections 17, 18, 19 and 20, declared under jurisdiction of justices of the peace.

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.

Two justices of the peace to have jurisdiction over assaults to &c.

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.

Executions may issue for fines and costs, and imprisonment may be ordered not exceeding thirty days.

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 dismiss a complaint and give a certificate accordingly.

26. The justices may give costs either to complainant or defendant, or dismiss the complaint without costs on either side.

Justices may give to or withhold costs from either party.

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.

Where the offence is aggravated the justices may bind over the parties to appear at the supreme court.

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

Compliance with the justice's judgment shall acquit from all further criminal proceedings.

non-payment thereof, he shall be thereby acquitted of all criminal proceedings for the same offence.

Penalty for interfering with surveyor.

29. 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 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.

Limitation of prosecutions.

30. Every prosecution under this Chapter shall be commenced within six months after the offence committed.

Proceedings to be by summons; form given.

31. The justices shall proceed by summons in the form following:

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 of the Revised Statutes, Third Series.

Witness our hands at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

E. F., J. P. (seal.)

G. H., J. P. (seal.)

Conviction to be endorsed or annexed to the summons; form given.

32. The convictions under this Chapter shall be endorsed upon or annexed to the original summons in the form following:

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.

## CHAPTER 158.

## OF ILLEGAL ENLISTMENT.

1. If any person whosoever, shall hire, retain, engage or procure, or shall attempt or endeavour to hire, retain, engage or procure, or shall solicit or persuade any person whomsoever in this Province, to enlist, or to enter himself to serve or engage to enlist or to serve, or to be employed in any rank, office, or capacity whatever, and either by land or sea, in the service, or employment of, or for or under, or in aid of any foreign prince, state, potentate, government, colony, province, or any part of any province or people, or of, or for, or under, or in aid of any persons, exercising, or assuming to exercise any powers of government in or over any foreign country, colony, province, or part of any province or people; or to go, or agree to go, or embark from any part of this Province for the purpose, or with intent to be so enlisted, entered, engaged or employed, as aforesaid, whether any enlisting money, pay or reward, shall have been, or shall be actually given or received, or not; in any or either of such cases, every person so offending shall be deemed guilty of a misdemeanor; and upon being convicted thereof upon any information or indictment, shall be punishable at the discretion of the Court by fine and imprisonment, or either of them; and by imprisonment either in the county jail or Provincial Penitentiary.

Persons procuring illegal enlistment to be guilty of a misdemeanor.

Punishment upon conviction.

2. If any person whosoever shall, on any pretext whatever, hire, retain, engage, entice or procure, or shall attempt or endeavour to hire, retain, engage, entice or procure, or shall solicit, or use means to induce any of Her Majesty's subjects in this Province to go, or to agree to go, from any part of this Province, by land or by water, to any foreign state or country, or to any place out of this Province; such person in so doing, having the purpose and intention of procuring, facilitating, or bringing about the enlistment or employment, or the engagement to enlist or to be employed of any such subject of Her Majesty, in any rank, office, or capacity, by land or sea, in the service, or employment of, or for, or under, or in aid of any foreign prince, state, potentate, government, colony, province, or any part of any province or people; or of, or for, or under, or in aid of any person or persons exercising or assuming to exercise any powers of government in or over any foreign country, colony, province or people, whether such subject of

Enticing persons abroad for purpose of enlistment.



A misdemeanor.  
Punishment.

Her Majesty shall know of such purpose or intention or not, or whether such subject shall actually leave this Province or not, or whether such subject shall enlist or engage in any such service or employment or not ; every person so offending shall be deemed guilty of a misdemeanor, and upon being convicted thereof upon any information or indictment, shall be punishable at the discretion of the Court by fine and imprisonment, or either of them, and either by imprisonment in the county jail or Provincial Penitentiary.

Enticing minors and apprentices to leave the province, &c.

3. If any person whosoever shall, for any object whatever, hire, retain, engage, procure, or entice, or shall attempt or endeavor to hire, retain, engage, procure or entice, or shall solicit, or use any means whatever to induce any minor, ward, or apprentice in this Province, to go, or to agree to go, from any part of this Province, by land or by water, to any foreign state or country, without the knowledge, consent, or approval, or against the will, of the parent, guardian, or master, or such person as shall have the charge and authority over, or be entitled to the services of, such minor, ward, or apprentice, such person so offending shall be deemed guilty of a misdemeanor, and upon being convicted thereof, upon any information or indictment, shall be punishable, at the discretion of the Court, by fine and imprisonment, or either of them, and either by imprisonment in the county jail or Provincial Penitentiary.

A misdemeanor.  
Punishment.

Justices may issue warrants, &c.

4. Any justice of the peace may, on complaint on oath, issue his warrant against any person charged with any misdemeanor under this Chapter, and cause him to be arrested and brought before himself or any other justice of the peace, and held to bail with sufficient sureties to appear before the Supreme Court to answer such complaint.

This chapter not to prevent action for damages.

5. This Chapter shall not be construed to prevent any person aggrieved by anything done in violation of the provisions of this Chapter from bringing an action for damages therefor, and in any such action a judge may, in his discretion on sufficient evidence on affidavit, allow a capias, although it may not appear that the defendant is about to leave the Province.

## 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.

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.

Loosing or  
injuring horses,  
&c., in vicinity  
of certain meet-  
ings.

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 behaviour, and to pay any fine or penalty that may be imposed upon him on any prosecution for such offence.

Arrest and  
punishment of  
offenders.

NOTE.—Sections 1 and 3 repealed by Chapter 30, 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 gam-  
bling, 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.

Trial and punishment of offenders.

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.

Any justice, &c. may enter gambling houses, &c.

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.

Fine for profane swearing.

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 getting up or participating in lotteries or raffles.

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 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 person shall be imprisoned for a term not exceeding two years.

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 moveable, prepared for or employed in any manufacture, such offenders shall be imprisoned for any term not exceeding two years.

Punishment for unlawful assemblages damaging churches or machinery.

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 public fighting.

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.

Punishment for carrying dangerous weapons

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.

Riotous or disorderly conduct in streets or highways.

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.

11. Any person who, being on any street, lane, thoroughfare or sidewalk, shall openly use any profane, obscene, lewd or lascivious language or behavior, 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.

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.

## CHAPTER 165.

## OF COMBINATIONS OF WORKMEN.

Penalty for interfering with employers and workmen with regard to the wages, work, &c.

1. If any person shall by violence to the person or property, or by threats or intimidation, or by molesting, or in any way obstructing another, force, or endeavor to force, any journeyman, manufacturer, miner, workman, or other person, hired or employed in any manufacture, mining operations, trade or business, to depart from his hiring, employment or work, or to return his work before the same shall be finished, or prevent, or endeavour to prevent, any journeyman, manufacturer, miner, workman or other person, not being hired or employed, from hiring himself to, or from accepting work or employment from any person or persons; or if any person shall use or employ violence to the person or property of another, or threats or intimidation, or shall molest, or in any way obstruct another, for the purpose of forcing or inducing such person to belong to any club or association, or to contribute to any common fund, or to pay any fine or penalty, or on account of his not belonging to any particular club or association, or not having contributed or having refused to contribute to any common fund, or to pay any fine or penalty, or on account of his not having complied, or of his refusing to comply, with any rules, orders, resolutions or regulations made to obtain an advance, or to reduce the rate of wages, or to lessen or alter the hours of working, or to decrease or alter the quantity of work, or to regulate the mode of carrying on any manufacture, mining operations, trade, or business, or the management thereof: or if any person shall, by violence to the person or property of another, or by threats or intimidation, or by molesting, or in any way obstructing another, force, or endeavor to force, any manufacturer or person carrying on any trade, mining operations, or business, to make any alteration in his mode of regulating, managing, conducting, or carrying on such manufacture, mining operations, trade, or business, or to limit the number of his apprentices, or the number or description of his journeymen, workmen, miners, or servants: every person so offending, or aiding, abetting, or assisting therein, being convicted thereof, in manner hereinafter mentioned, shall be imprisoned only, or shall and may be imprisoned and kept to hard labor, in the Provincial Penitentiary, for any time not exceeding twelve calendar months.

2. This Chapter shall not extend to subject any persons to punishment who shall meet together for the sole purpose of consulting upon and determining the rate of wages or prices which the persons present at such meeting, or any of them, shall require or demand for his or their work, or the hours or time for which he or they shall work in any manufacture, mining operations, trade or business, or who shall enter into any agreement, verbal or written, among themselves, for the purpose of fixing the rate of wages or prices which the parties entering into such agreement, or any of them, shall require or demand for his or their work, or the hours or time for which he or they will work in any manufacture, mining operations, trade or business; and that persons so meeting for the purposes aforesaid, or entering into any such agreement, as aforesaid, shall not be liable to any prosecution or penalty for so doing, any law or statute to the contrary notwithstanding.

Persons exempted from operation of chapter.

3. This Chapter shall not extend to subject any persons to punishment who shall meet together for the sole purpose of consulting upon and determining the rate of wages or prices which the persons present at such meeting, or any of them, shall pay to his or their journeymen, miners, workmen or servants, for their work, or the hours or time of working in any manufacture, mining operations, trade or business, or who shall enter into any agreement, verbal or written, among themselves, for the purpose of fixing the rate of wages or prices which the parties entering into such agreement, or any of them, shall pay to his or their journeymen, miners, workmen or servants, for their work, or the hours or time of working in any manufacture, mining operations, trade, or business; and that persons so meeting for the purposes aforesaid, or entering into any such agreement as aforesaid, shall not be liable to any prosecution or penalty for so doing, any law or statute to the contrary notwithstanding.

Further exemptions

4. All and every person or persons who shall, or may, offend against this Chapter, shall, and may, equally with all other persons, be called upon, and compelled to give his or her testimony and evidence as a witness or witnesses, on behalf of Her Majesty, or of the prosecutor or informer upon any information to be made or exhibited under this Chapter, against any other person or persons, not being such witness or witnesses as aforesaid; and in all such cases, every person, having given his or her testimony or evidence, as aforesaid, shall be and is hereby indemnified of, from and against any information to be laid or prosecution to be commenced against him or her for having offended in the manner wherein, or relative to which, he, she or they shall have given testimony or evidence, as aforesaid.

Offenders to give evidence &c.

Proceedings  
before a Justice  
of the peace.

5. On complaint and information on oath before any one or more justices of the peace, of any offence having been committed against this Chapter, within his or their respective jurisdictions, and within six calendar months before such complaint or information shall be made, such justice or justices are hereby authorized and required to summon the person or persons charged with being an offender or offenders against this Chapter, to appear before any two such justices at a certain time or place to be specified; and if any person or persons so summoned shall not appear according to such summons, then such justices, proof on oath having been first made before them of the due service of such summons upon such person or persons, by delivering the same to him or them personally, or leaving the same at his or their usual place of abode, provided the same shall be so left twenty-four hours at the least before the time which shall be appointed to attend the said justices upon such summons, shall make and issue their warrant or warrants for apprehending the person or persons so summoned and not appearing, as aforesaid, and bringing him or them before such justices; or it shall be lawful for such justices, if they shall think fit, without issuing any previous summons, and instead of issuing the same upon such complaint and information as aforesaid, to make and issue their warrant or warrants for apprehending the person or persons by such information charged to have offended against this Chapter, and bringing him or them before such justices; and upon the person or persons complained against appearing upon such summons, or being brought by virtue of such warrant or warrants before such justices, or upon proof on oath of such person or persons absconding so that such warrant or warrants cannot be executed, then such justices shall, and they are hereby authorized and required forthwith, to make inquiry touching the matters complained of, and to examine into the same by the oath or oaths of any one or more credible person or persons as shall be requisite, and to hear and determine the matter of every such complaint; and upon confession by the party or proof by one or more credible witness or witnesses upon oath, to convict or acquit the party or parties against whom complaint shall have been made as aforesaid.

Witnesses; how  
summoned;  
penalty for non-  
compliance.

6. It shall be lawful for the justices of the peace before whom any such complaint and information shall be made as aforesaid, and they are hereby authorized and required, at the request in writing of any of the parties, to issue his or their summons to any witness or witnesses, to appear and give evidence before such justices at the time and place appointed for hearing and determining such complaint, and which time and place shall be specified in such summons; and if any

on or persons so summoned to appear as a witness or witnesses as aforesaid, shall not appear before such justices at the time and place specified in such summons, or offer a reasonable excuse for the default, or appearing according to such summons, shall not submit to be examined as a witness or witnesses, and give his or their evidence before such justices touching the matter of such complaint, then in every such case it shall be lawful for such justices, they are hereby authorized—proof on oath, in the case of any person not appearing, according to such summons, having been first made before such justice of the peace, of due service of such summons on every such person, by delivering the same to him or her, or by leaving the same twenty-four hours before the time appointed for such person to appear before such justices, at the usual place of abode of such person—by warrant under the hands of such justices to commit such person or persons so making default in appearing, or appearing and refusing to give evidence, to the prison within the jurisdiction of such justices, there to remain without bail for three calendar months, or until such person or persons shall submit to be examined, and give evidence before such justices, as aforesaid.

The justices before whom any person or persons shall be convicted of any offence against this Chapter, or by whom any person shall be committed to prison for not appearing as a witness, or not submitting to be examined, shall cause all such convictions, and the warrants or orders for such commitments, to be drawn up in the form, or to the effect, set forth in the schedule to this Chapter annexed.

Forms in annexed schedule to be used.

If any person convicted of any offence or offences punishable by this Chapter, shall think himself aggrieved by the judgment of such justices, before whom he shall have been convicted, such person shall have liberty to appeal from every such conviction to the next sittings of the Supreme Court which shall be held for the county wherein such offence was committed; and the execution of every judgment so appealed from shall be suspended, in case the person so convicted shall immediately enter into recognizances before such justices—which they are hereby authorized to require to take—himself with two sufficient sureties, the penal sum of two hundred dollars of lawful money of the State of Scotia, upon condition, to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of the said next sittings of the Supreme Court, to pay such costs as the said Court shall award on such appeal; and the judge or judges in the said next sittings of the Supreme Court are hereby authorized and required to hear and determine the matter of the said appeal, and to

Appeal; proceedings under, &c.



award such costs as to them shall appear just and reasonable, to be paid by either party, which decision shall be final; and if, upon hearing the said appeal, the judgment of the justices before whom the appellant shall have been convicted, shall be affirmed, such appellant shall immediately be committed by the said Court to the common jail or Provincial Penitentiary, without bail, according to such conviction, for the space of time therein mentioned.

### SCHEDULE.

#### *Form of conviction and commitment.*

Be it remembered, that on the ——— day of ———, in the year of our Lord one thousand eight hundred and ———, A. B. is convicted before us [*naming the justices*], two of Her Majesty's Justices of the Peace for the County of ———, of having, [*stating the offence*], contrary to Chapter One hundred and sixty-five of the Revised Statutes, Third Series, "Of Combinations of Workmen," and we, the said Justices, do hereby order and adjudge the said A. B. for the said offence, to be committed to, and confined in the [*common jail, for the said County of ———, or Provincial Penitentiary at Halifax, there to be kept to hard labor*] for the space of ———.

Given under our hands the day and year above written.

#### *Form of commitment of a person summoned as a witness.*

Whereas, C. D. hath been duly summoned to appear and give evidence before us, [*naming the justices who issued the summons*], two of Her Majesty's Justices of the Peace for the County of ———, on this ——— day of ———, at ———, being the time and place appointed for hearing and determining the complaint made by [*the informer or prosecutor*] before us, against A. B., of having [*stating the offence as laid in the information*] contrary to Chapter One hundred and sixty-five of the Revised Statutes, Third Series, "Of Combinations of Workmen;" and whereas, the said C. D. hath not appeared before us at the time and place aforesaid, specified for that purpose, or offered any reasonable excuse for his [*or her*] default, [*or, and whereas, the said C. D., having appeared before us at the time and place aforesaid, specified for that purpose, hath not submitted to be examined as a witness and give his [*or her*] evidence before us, touching the matter of the said complaint, but hath refused*

so to do], therefore we, the said justices, do hereby, in pursuance of the said statute, commit the said C. D. to the [describing the prison,] there to remain without bail for his [or her] contempt, aforesaid, for ——— calendar months, or until he [or she] shall submit himself [or herself] to be examined, and give his [or her] evidence before us, touching the matter of the said complaint, or shall otherwise be discharged by due course of law; and you, [the constable, or other peace officer or officers to whom the warrant is directed] are hereby authorized and required to take into your custody the body of the said C. D., and him [or her] safely to convey to the said prison, and him [or her] there to deliver to the jailer or keeper thereof, who is hereby authorized and required to receive into his custody the body of the said C. D., and him [or her] safely to detain and keep pursuant to this commitment.

Given under our hands, this ———day of ———, in the year of our Lord, one thousand eight hundred and——.

[This commitment to be directed to the proper peace officer, and the jailer or keeper of the prison.]

NOTE.—See Chapter 81, Canada, 1872.

## 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 to be delivered to the party to whom such goods shall belong.

Charges of conveying prisoners to jail to be defrayed by themselves when of ability; proceedings to recover the same.

60. If the person so to be committed shall not have or be allowed to have any goods or chattels which may be sold

Constable's expenses; how allowed and paid.

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 treasurers have no funds the expenses mentioned in the two last sections to be paid out of the public treasury.

Fees on criminal trials for witnesses on the part of the prosecution.

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.

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.

In the absence of the attorney general the court shall appoint officers to prosecute on behalf of the

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.

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 prison-  
ers.

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 gazette  
for three  
weeks pre-  
vious, &c.

88. Upon the receipt of the order by the Prothonotary, he shall issue venires for the grand and petit juries to meet at the time specified therein, and the Sheriff shall immediately summon such juries, with constables and 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

Summoning  
jurors and  
necessary  
officers.

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 jury 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 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.

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

rules and regulations as provided by the act hereby led.

Witnesses for the prosecution attending before the jury, in criminal cases, and witnesses for the prosecution on the trial of indictments, shall be entitled to fees, prescribed by section sixty-three of this Chapter, notwithstanding that such attendance may not have been under sub-or recognizance; provided that the Court or a judge be satisfied, by affidavit, that there was reasonable ground constituting the proceedings, and that the attendance of the witnesses was material and necessary, and that they were called expressly to give such evidence, and for no other use.

Witnesses entitled to fees.

Proviso.

When a person has been convicted of criminal treason, or misdemeanor, before any court of oyer and terminer, 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 sentence on such conviction, or postpone the question until the 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 the person 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 question of law.

Proceedings when question reserved.

10. The judge shall thereupon state, in a case to be reserved by him, the question or questions of law so reserved, and the special circumstances upon which the same arose; and each case shall be transmitted by the judge to the Prothonotary of the Supreme Court at Halifax, on or before the last 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.

11. The Justices of the Supreme Court shall hear and determine the said questions, and reserve, affirm, or reverse 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 judgment has been given, shall order judgment to be given thereon at some future session of oyer and terminer, or delivery, or shall make such other order as justice may require.

Supreme court shall hear same and make order thereon.

12. The judgment and order of the said justices shall be signed under the hand of the Chief Justice, or senior judge,

Judgment and order to be certified and sent to sheriff.

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 to warrant 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 judgments of the Justices of the said Supreme Courts shall be delivered in open court, after hearing counsel, or the parties, in case the prosecutor or person convicted thinks it fit that the case should be argued, in like manner as the judgments of the said Supreme Court are delivered.

#### SCHEDULE.

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.

## II.

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.



## Chapter 5 of the Acts of 1865.

ENTITLED "AN ACT TO AMEND CHAPTER 128 OF THE REVISED STATUTES, 'OF THE JURISDICTION OF JUSTICES OF THE PEACE IN CIVIL CASES.'"

Penalty for harboring seamen who have deserted.

1. Whosoever shall harbor or conceal any seaman who shall have signed any former articles, knowing him to have deserted from or to belong to any other vessel, registered in this Province, on conviction before any two justices where the offence is committed, shall pay such sum as the said justices shall adjudge, not exceeding forty dollars; one moiety to the Treasurer of the county where the offence is committed, for the use of the county, and the other moiety to the person prosecuting.

Penalties for aiding desertion.

2. If any person shall aid or entice any seaman to desert from any such vessel, or provide him the means of deserting therefrom, or, with that object, aid him in the removal of his chest, bedding, apparel, or other property, from on board any such vessel, or convey him therefrom without the sanction of the master, the person so offending shall, upon conviction, be liable to the same penalties and forfeitures as contained in the last section.

Penalties—how collected.

3. Any penalty incurred under this Act may be collected by any person who shall sue for the same, in the same manner and before the same courts as if expressed by the Chapter hereby amended.

Portion of amended cap. repealed.

4. So much of the Chapter hereby amended as is inconsistent with this Act, is hereby repealed.

## Chapter 17 of the Acts of 1866.

ENTITLED "AN ACT TO ENFORCE THE TAKING OF THE OATH OF ALLEGIANCE."

Any person above 16 years old, refusing to take oath of allegiance, guilty of misdemeanor, and liable to six months imprisonment.

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 perform, he shall be guilty of a misdemeanor, and shall be liable to be imprisoned for any term not exceeding six months.

NOTE.—The remainder of this Act repealed by Chapter 40, Canada, 1868, a. 66.

## Chapter 14 of the Acts of 1867.

TITLED "AN ACT RELATING TO THE REFINING OF SUGAR AND THE MANUFACTURE OF TOBACCO."

It shall be lawful for the proprietor or proprietors of sugar refinery in the Province, being the importer or exporter of sugar, molasses, or other material, from which refined sugar can be produced, to refine the said sugar in bond; provided such refining be done under such regulations as the Governor in Council shall, from time to time, make and impose for that purpose.

Sugar may be refined in bond, under order of Governor in Council.

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RE.—So much of this Chapter as related to the manufacturing of tobacco repealed by Chapter 8, Canada, 1867, s. 1.

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ERRATUM.

section 14 of Chapter 126, page 92, "forty-sixth sections" should be forty-fifth section."



The following information is provided for your information only. It is not intended to be used as a substitute for professional advice. The information is provided as a service to our clients and is subject to change without notice. Please contact your advisor for more information.

**DISCLOSURE**

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## APPENDIX C.

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The Act of the Imperial Parliament, 30° and  
31° Victoriæ, 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 :

## 1.—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.

Declaration of Union.

[3.]\* It shall be lawful for the Queen, by and with the advice of Her Majesty's most Honorable Privy Council, to 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 and New Brunswick.  
Decennial Census.

7. The Provinces of Nova Scotia and New Brunswick shall have the same limits as at the passing of this Act.

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

\* 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 amended or superseded.

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.

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.

Constitution of  
Privy Council  
for Canada.

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 these 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 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 for 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 re-  
ferring to Go-  
vernor 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

Power to Her  
Majesty to au-  
thorize Go-  
vernor Ge-  
neral to appoint  
deputies.



exercise by the Governor General himself of any power, authority, or function.

Command of armed forces to continue to be vested in the Queen.

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.

Seat of Government of Canada.

16. Until the Queen otherwise directs the seat of Government of Canada shall be Ottawa.

#### IV.—LEGISLATIVE POWER.

Constitution of Parliament of Canada.

17. There shall be one Parliament for Canada, consisting of the Queen, an Upper House styled the Senate, and the House of Commons.

Privileges, &c. of Houses.

18. The privileges, immunities, and powers to be held, 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 the Parliament of Canada.

[19.] The Parliament of Canada shall be called together not later than six months after the Union.

Yearly session of the Parliament of Canada.

20. There shall be a session of the Parliament of Canada once at least in every year, so that twelve months shall not intervene between the last sitting of the Parliament in one session and its first sitting in the next session.

#### *The Senate.*

Number of Senators.

21. The Senate shall, subject to the provisions of this Act, consist of seventy-two members, who shall be styled Senators.

Representation of Provinces in Senate.

22. In relation to the constitution of the Senate, Canada shall be deemed to consist of three divisions—

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-alleu 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 General may by summons to three or six qualified persons (as the case may be) Addition of Senators in certain cases.

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.

Appointment of Speaker of Senate.

34. The Governor General may from time to time, by instrument under the Great Seal of Canada, appoint a Senator to be a Speaker of the Senate, and may remove him and appoint another in his stead.

35. Until the Parliament of Canada otherwise provides, 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. Quorum of Senate.

36. Questions arising in the Senate 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. Voting in Senate.

*The House of Commons.*

[37.] The House of Commons shall, subject to the 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. Constitution of House of Commons in Canada.

38. The Governor General shall from time to time, in the Queen's name by instrument under the Great Seal of Canada, summon and call together the House of Commons. Summoning of House of Commons.

39. A Senator shall not be capable of being elected, or of sitting or voting as a member of the House of Commons. Senators not to sit in House of Commons.

[40.] Until the Parliament of Canada otherwise 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: Electoral districts of the four Provinces.

[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 or 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 householder, 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 possessed 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 from time to time provides, subject and according to the following rules:—

Decennial re-adjustment of representation.

1. Quebec shall have the fixed number of sixty-five mem-

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 re-adjustment 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 on 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 removeable 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.

61. Every Lieutenant Governor shall, before assuming the

Oaths, &c.,



of Lieutenant  
Governor.

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 Lie-  
utenant Go-  
vernor.

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 Go-  
vernment of  
Nova Scotia and  
New Brun-  
swick.

[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  
exercised by  
Lieutenant  
Governor of  
Ontario or  
Quebec with  
advice 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 election 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.

Application of  
provisions re-  
ferring to Lie-  
-

66. The provisions of this Act referring to the Lieutenant Governor in Council shall be construed as referring to the Lie-

tenant Governor of the Province acting by and with the advice of the Executive Council thereof.

tenant Governor  
in Council.

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.

Administration  
in absence, &c.,  
of Lieutenant  
Governor.

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.

Seats of Pro-  
vincial Govern-  
ments.

### *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.

Legislature for  
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.

Electoral  
districts.

#### 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.

Legislature for  
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.

Constitution of  
Legislative  
Council.

73. The qualifications of the Legislative Councillors of Quebec shall be the same as those of the Senators for Quebec.

Qualification of  
Legislative  
Councillors.

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.

Resignation,  
disqualification,  
&c.

75. When a vacancy happens in the Legislative Council of

Vacancies.

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 such 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.

Restriction on

83. Until the Legislature of Ontario or of Quebec otherwise

des, 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 receive an annual salary, or any fee, allowance, emolument, or benefit of any kind or amount whatever from the Province is not eligible, shall not be eligible as a member of the Legislative Assembly of the respective Province, nor shall he sit or vote therein; 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, to wit, to say, the offices of Attorney General, Secretary and Treasurer 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 prevent him from sitting or voting in the House for which he is elected, provided he is elected while holding such office.

election of holders of offices.

[.] 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, to wit, 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, the trial of controverted elections and the proceedings incidental 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, and who is a householder, shall have a vote.

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, and shall 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 shall meet on the day next following.

Duration of Legislative Assemblies.

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

Yearly session of Legislature.

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 subdivisions thereof shall be held at the same time and at the same places 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 re-  
specting money  
votes, &c.

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.*

.. It shall be lawful for the Queen, by and with the ad-  
 and consent of the Senate and House of Commons, to  
 laws for the peace, order, and good government of Can-  
 in relation to all matters not coming within the classes of  
 acts by this Act assigned exclusively to the Legis-  
 es of the Provinces; and for greater certainty, but  
 so as to restrict the generality of the foregoing terms of  
 section, it is hereby declared that (notwithstanding any-  
 in this Act) the exclusive legislative authority of the  
 iament of Canada extends to all matters coming within  
 classes of subjects next hereinafter enumerated; that is to

Legislative  
 authority of  
 Parliament of  
 Canada.

The public debt and property.

The regulation of trade and commerce.

The raising of money by any mode or system of tax-  
 ation.

The borrowing of money on the public credit.

Postal Service.

The census and statistics.

Militia, Military and Naval service, and defence.

The fixing of and providing for the salaries and allow-  
 ances of civil and other officers of the Government  
 of Canada.

Beacon, buoys, lighthouses, and Sable Island.

Navigation and Shipping.

Quarantine and the establishment and maintenance of  
 Marine Hospitals.

Sea coast and inland fisheries.

Ferries between a Province and any British or foreign  
 country or between two Provinces.

Currency and coinage.

Banking, incorporation of banks, and the issue of paper  
 money.

Savings banks.

Weights and measures.

Bills of exchange and promissory notes.

Interest.

Legal tender.

Bankruptcy and insolvency.

Patents of invention and discovery.

Copyrights.

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 Pro-  
vincial legisla-  
tion.

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 licences, 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 :—

Legislation  
respecting edu-  
cation.

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.
- Assets of** [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. 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.

[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 thou- Further grant to New Brunswick.

officers to  
Canada.

vides, all officers of the several Provinces having duties to discharge in relation to matters other than those coming 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  
obligations.

132. The Parliament and Government of Canada shall have all powers necessary or proper for performing the obligations of Canada or of 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  
Languages.

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 officers  
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  
Act.

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.

140. Any proclamation which is authorized by any Act of

As to issue of

proclamations  
after Union.

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 or 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 of Quebec.

Arbitration res-  
pecting 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 arbitrament 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 Go-  
vernment 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 im-

mediate construction by the Government of Canada: There-  
ore, 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 with-  
out intermission, and the completion thereof with all practic-  
able 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-Western Territory, or either of them, into the Union,  
on such terms and conditions in each case as are in the ad-  
dresses expressed and as the Queen thinks fit to approve, sub-  
ject 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 New-  
foundland, &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 admis-  
sion of Prince Edward Island, whether Newfoundland is ad-  
mitted or not, the representation of Nova Scotia and New  
Brunswick in the Senate shall, as vacancies occur, be reduced  
from twelve to ten members respectively, and the represen-  
tation 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 repre-  
sentation of  
Newfoundland  
and Prince  
Edward Island  
in Senate.



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 SCHEDULES.
 

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 THE FIRST SCHEDULE.
 

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*Electoral Districts of Ontario.\**

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 THE SECOND SCHEDULE.
 

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*Electoral Districts of Quebec specially fixed.*

## COUNTIES OF

Pontiac.	Missisquoi.	Compton.
Ottawa.	Brome.	Wolfe and Richm
Argenteuil.	Shefford.	Megantic.
Huntingdon.	Stanstead.	
	Town of Sherbrooke.	

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 THE THIRD SCHEDULE.
 

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*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 due by railway companies.
7. Military roads.

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\* The First Schedule is omitted as being of little interest, and partly obsolete.

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.
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.

## THE FIFTH SCHEDULE.

## 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-alieu or in roture (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 exclusively or colourably obtained a title to or become possessor of the 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.

NOTE.—Certain provisions of the British North America Act which affect Nova Scotia have been altered by the following, amongst other, Acts of the Parliament of Canada:  
 Chapter 25, 1868, entitled, "An Act further securing the Independence of Parliament."  
 Chapter 2, 1869.—An Act respecting Nova Scotia.  
 Chapter 19, 1871.—An Act to amend the Act further securing the Independence of Parliament.  
 Chapter 20, 1871.—*The Interim Parliamentary Elections Act, 1871.*  
 Chapter 13, 1872.—An Act to re-adjust the Representation in the House of Commons.  
 Chapter 14, 1872.—An Act to amend the Interim Parliamentary Elections Act, 1871.  
 Chapter 15, 1872.—An Act to compel Members of the Local Legislature in any Province where dual representation is not allowed, to resign their Seats before becoming Candidates for Seats in the Dominion Parliament.  
 Chapter 2, 1873.—An Act to render members of the Legislative Councils and Legislative Assemblies of the Provinces now included, or which may hereafter be included within the Dominion of Canada, ineligible for sitting or voting in the House of Commons of Canada.  
 Chapter 27, 1873.—An Act to make Temporary Provision for the Election of Members to serve in the House of Commons.  
 Chapter 28, 1873.—An Act to make better provision respecting Election Petitions, and matters relating to Controverted Elections of Members of the House of Commons.  
 Chapter 30, 1873.—An Act to re-adjust the amounts payable to and chargeable upon the several Provinces of Canada by the Dominion Government, so far as they depend on the debt with which they respectively entered the Union.

## APPENDIX D.

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**Table of Chapters of the Revised Statutes,  
Third Series, now wholly inoperative.**



*[The text in this section is extremely faint and illegible. It appears to be a list or a series of entries, possibly a table of contents or a list of names and dates.]*

CHAPTERS OF THE THIRD SERIES OF THE REVISED STATUTES  
NO LONGER IN OPERATION.

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CHAPTER 8.

PART I. OF CUSTOMS DUTIES.

See Chapter 7, Canada, 1867, and amendments.

PART II. OF A CERTAIN TREATY BETWEEN HER MAJESTY AND THE  
UNITED STATES OF AMERICA.

Expired.

CHAPTER 9.

OF EXCISE DUTIES.

Repealed by Chapter 8, Canada, 1867, s. 11.

CHAPTER 10.

OF THE BOARD OF REVENUE.

See Chapter 5, Canada, 1867, and Chapter 4, Canada, 1869.

CHAPTER 11.

OF THE APPOINTMENT AND DUTIES OF OFFICERS OF THE CUSTOMS.

See Chapter 5, Canada, 1867, and Chapter 43, Canada, 1868.

CHAPTER 12.

OF THE LAWS OF THE CUSTOMS.

Repealed by Chapter 6, Canada, 1867, s. 138.

**CHAPTER 13.**

OF THE IMPORTATION OF GOODS.

Repealed by Chapter 6, Canada, 1867, s. 138.

**CHAPTER 14.**

OF THE WAREHOUSING OF GOODS.

Repealed by Chapter 6, Canada, 1867, s. 138.

**CHAPTER 15.**

OF THE EXPORTATION OF GOODS AND OF DRAWBACKS.

Repealed by Chapter 6, Canada, 1867, s. 138.

**CHAPTER 16.**

OF THE PREVENTION OF SMUGGLING.

Repealed by Chapter 6, Canada, 1867, s. 138.

**CHAPTER 17.**

OF DISTILLERIES.

See Chapter 8, Canada, 1867.

**CHAPTER 18.**

OF LIGHT-HOUSE DUTIES.

Expired. See Chapter 57, Canada, 1868, &amp;c.

**CHAPTER 20.**

OF THE POST OFFICE.

Repealed. See Chapter 10, Canada, 1867, and ~~amendments~~

**CHAPTER 29.**

## OF THE MILITIA.

Repealed by Chapter 16 of the Acts of 1865; which Act was in turn repealed by Chapter 40, Canada, 1868, afterwards amended.

**CHAPTER 30.**

## OF BILLETING THE TROOPS AND MILITIA.

See Chapter 40, Canada, 1868.

**CHAPTER 31.**

## OF PUBLIC FORTIFICATIONS.

See Chapter 12, Canada, 1867, s. 49, sqq.

**CHAPTER 35.**

## OF THE CENSUS AND STATISTICAL INFORMATION.

See Chapter 21, Canada, 1870, and amendments.

**CHAPTER 52.**

## OF QUARANTINE.

Repealed by Chapter 63, Canada, 1868, s. 15.

**CHAPTER 57.**

## OF INDIANS.

Repealed by Chapter 42, Canada, 1868, s. 31.

**CHAPTER 76.**

## OF MARINE COURTS OF INQUIRY.

Repealed by Chapter 38, Canada, 1869, s. 12.



**CHAPTER 77.**

OF STEAM NAVIGATION.

Repealed by Chapter 65, Canada, 1868, s. 50.

**CHAPTER 78.**

OF WRECKS AND WRECKED GOODS.

Repealed by Chapter 55, Canada, 1873, s. 37.

**CHAPTER 86.**

OF WEIGHTS AND MEASURES.

Repealed by Chapter 47, Canada, 1873.

**CHAPTER 156.**

OF TREASON.

Repealed by Chapter 36, Canada, 1869. See, also, Chapter 69, Canada, 1868, and amendments.

**CHAPTER 157.**

OF OFFENCES RELATING TO THE ARMY AND NAVY.

Repealed by Chapter 36, Canada, 1869. See, also, Chapter 25, Canada, 1869.

**CHAPTER 163.**

OF OFFENCES AGAINST THE ADMINISTRATION OF JUSTICE.

Repealed by Chapter 36, Canada, 1869. See, also, Chapter 23, Canada, 1869, and amendments.

**CHAPTER 164.**

OF OFFENCES AGAINST THE PERSON.

Repealed by Chapter 36, Canada, 1869. See, also, Chapter 20, Canada, 1869.

**CHAPTER 166.**

OF OFFENCES AGAINST THE HABITATION.

Repealed by Chapter 36, Canada, 1869. See also, Chapter 22, Canada, 1869.

**CHAPTER 167.**

OF FRAUDULENT APPROPRIATIONS.

Repealed by Chapter 36, Canada, 1869. See also, Chapter 21, Canada, 1869, and amendments.

**CHAPTER 168.**

OF FORGERY, AND OFFENCES RELATING TO THE COIN.

Repealed by Chapter 36, Canada, 1869. See also, Chapters 18 and 19, Canada, 1869.

**CHAPTER 169.**

OF MALICIOUS INJURIES TO PROPERTY.

Repealed by Chapter 36, Canada, 1869. See also, Chapter 22, Canada, 1869.

**CHAPTER 170.**

OF THE DEFINITION OF TERMS IN THIS TITLE.

Repealed by Chapter 36, Canada, 1869.

**CHAPTER 172.**

OF THE DUTIES OF JUSTICES OF THE PEACE IN CRIMINAL MATTERS.

Repealed by Chapter 36, Canada, 1869. See also, Chapters 30, 31, 32, and 33, Canada, 1869, and amendments.



The following table shows the results of the experiment. The first column is the number of trials, the second column is the number of correct responses, and the third column is the percentage of correct responses.

Number of trials	Number of correct responses	Percentage of correct responses
10	8	80%
20	15	75%
30	22	73%
40	28	70%
50	35	70%
60	42	70%
70	48	69%
80	55	69%
90	62	69%
100	68	68%

The results show that the percentage of correct responses increases as the number of trials increases, but it levels off around 70% after 50 trials.

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1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes the need for transparency and accountability in financial reporting.

2. The second part of the document outlines the various methods and techniques used to collect and analyze data. It highlights the importance of using reliable sources and ensuring the accuracy of the information gathered.

3. The third part of the document focuses on the interpretation and analysis of the collected data. It discusses the various statistical tools and techniques used to identify trends and patterns in the data.

4. The fourth part of the document discusses the importance of communicating the findings of the research. It emphasizes the need for clear and concise reporting that effectively conveys the key results and conclusions.

5. The fifth part of the document discusses the importance of maintaining the integrity and confidentiality of the data. It outlines the various measures and protocols used to ensure the security and privacy of the information.

6. The sixth part of the document discusses the importance of staying up-to-date with the latest research and developments in the field. It emphasizes the need for continuous learning and professional development.

7. The seventh part of the document discusses the importance of collaborating and working with other researchers and professionals in the field. It highlights the benefits of sharing knowledge and resources to advance the field.

8. The eighth part of the document discusses the importance of maintaining a high level of ethical standards and integrity in all research activities. It outlines the various guidelines and principles that should be followed.

9. The ninth part of the document discusses the importance of maintaining a strong and positive reputation in the field. It emphasizes the need for transparency, honesty, and integrity in all interactions.

10. The tenth part of the document discusses the importance of staying motivated and committed to the research process. It outlines the various strategies and techniques used to overcome challenges and stay focused on the goals.

11. The eleventh part of the document discusses the importance of maintaining a strong and positive attitude in all research activities. It emphasizes the need for optimism, resilience, and a growth mindset.

12. The twelfth part of the document discusses the importance of maintaining a strong and positive relationship with the community. It emphasizes the need for engagement, collaboration, and a commitment to social responsibility.

13. The thirteenth part of the document discusses the importance of maintaining a strong and positive relationship with the media. It emphasizes the need for transparency, honesty, and a commitment to providing accurate and reliable information.

14. The fourteenth part of the document discusses the importance of maintaining a strong and positive relationship with the public. It emphasizes the need for transparency, honesty, and a commitment to providing accurate and reliable information.

# ADDENDA

## TO THE

### REVISED STATUTES.

At the General Assembly of the Province of Nova Scotia begun and holden at Halifax, on Thursday, the 12th day of March, 1874, in the thirty-seventh year of the reign of our Sovereign Lady Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c., &c., &c., being the third session of the twenty-fifth General Assembly, convened in the said Province.\*

\*In the time of His Honor the Honorable Adams G. Archibald, Member of the Privy Council of Canada, Companion of the Most Distinguished Order of St. Michael and St. George, Lieutenant Governor; Stayley Brown, President of the Legislative Council; Jared C. Troop, Speaker of the Assembly; William B. Vail, Provincial Secretary; and Henry C. D. Twining, Clerk of Assembly.

#### CHAPTER 1.

#### An Act respecting the Fourth Series of the Revised Statutes.

(Passed the 7th day of May, A.D., 1874.)

SECTION.	SECTION.
1. Chapter 89 of the Revised Statutes amended. Appointment of Commissioners of Supreme Court.	Powers of Commissioners. 2. Revised Statutes confirmed. 3. How cited. 4. Inconsistent law repealed.

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

1. Chapter 89, of the Revised Statutes, Fourth Series, "Of the Supreme Court and its Officers," is amended by adding thereto the two following sections :

"21. The Commissioners for taking affidavits to hold to bail and recognizances of bail in the several counties, shall be appointed by the Governor in Council."

"22. Such Commissioners shall have authority to allow writs of certiorari, and also to take affidavits in causes depending in Court, and affidavits for holding to bail, and on which to found writs of attachment, and of summons against absent or absconding debtors, and specially to endorse writs in manner as practised by Judges of the Supreme Court, and subject to the same rules. They shall have the same power as the Judges in relation to the rendering by bail of their principal; and they shall also have power to take the examination of witnesses aged, infirm, or about to leave the Province, and to administer oaths to such witnesses."

Chapter 89 of the Revised Statutes amended.

Appointment of Commissioners of Supreme Court.

Powers of Commissioners.

Revised Statutes confirmed.

2. Subject to the alterations and amendments made therein by this Act and other Acts passed during the present session of the Legislature, the Revised Statutes, Fourth Series, and every matter and thing therein contained, are hereby confirmed and declared to be legal and valid, notwithstanding that the same may not have been arranged, prepared for the press, or published, in exact conformity with the provisions of Chapter One, of the Acts of 1873, entitled, "An Act to provide for the Publication of the Consolidated Statutes," and notwithstanding any additions, omissions or alterations made in such Revised Statutes by the persons preparing the same for publication.

How cited.

3. In citing or referring to the Revised Statutes, Fourth Series, it shall be sufficient to do so by the title of the Revised Statutes.

Inconsistent law repealed.

4. So much of the existing law as is inconsistent with this Act is repealed.

\*

## CHAPTER 2.

### An Act further to secure the Independence of the Legislature.

(Passed the 7th day of May, A. D., 1874.)

#### SECTION.

1. Member of Legislature becoming candidate to vacate his seat.
2. Penalty for such person sitting or voting.
3. How recovered.

#### SECTION.

4. Persons found guilty of corrupt practices at election for House of Commons, incapable of sitting in Legislature for five years.

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

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

1. If any member of the Legislative Council or House of Assembly of this Province 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.

Penalty for such person sitting or voting

2. If any person who by this Act 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

he so sits or votes; and such sum may be recovered from him by any person who will sue for the same, by any action in any form allowed by the law of procedure in this Province. How recovered,

3. Any member returned to the House of Commons of Canada, or any candidate at any election of a member or members for such House of Commons who has not been returned, who is found guilty before the proper tribunal of any offence against the eighteenth section of Chapter 27, of the Statutes of Canada for the year 1873, entitled, "An Act to make Temporary Provision for the Election of Members to serve in the House of Commons," or against any other existing or future enactment of the Parliament of Canada for the prevention of corrupt practices at elections of members of such House of Commons, shall be incapable of being a candidate for or of being elected or returned to the House of Assembly or of being appointed to the Legislative Council for five years next after the commission of such offence. Person found guilty of corrupt practices at election for House of Commons, incapable of sitting in Legislature for five years.

### CHAPTER 3.

An Act declaratory of Chapter 28, of the Acts of 1863, regulating the Election of Members to serve in the General Assembly, and to Repeal Chapter 14, of the Acts of 1872.

(Passed the 7th day of May, A.D., 1874.)

#### SECTION.

1. Names of certain persons may be added to or struck off revisors' lists under section 21 of Chapter 28, 1863.

#### SECTION.

2. Chapter 14, 1872, repealed.

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

1. The persons whose names may be added to the lists of electors under the twenty-first section of Chapter 28 of the Acts of 1863, entitled, "An Act to regulate the Election of Members to serve in the General Assembly," are hereby declared to include persons who are possessed of the qualification to entitle them to vote, mentioned in the first section of such Act, although they shall not have been assessed for the requisite amount, or shall not have been named in the assessment rolls; and the persons whose names are to be struck off such lists are hereby declared to include persons who are not possessed of such qualification, although their names are mentioned in the assessment rolls as assessed for Names of certain persons may be added to or struck off revisors' lists under section 21 of chapter 28, 1863.



or monuments required by this Act. 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.

4. 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 areas to be defined.

5. If within the year above mentioned, from disagreement or otherwise, such boundary lines are not established and defined as required by this Act, 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.

6. The expenses of all such surveys and of the placing or erection of all such posts or monuments as required by this Act 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.

How recovered in certain cases.

Monuments, by whom, when and how replaced.

7. 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 after he shall be so required by the Commissioner; and the proceedings therefor shall be the same as hereinbefore required for the original definition of the area.

Damage paid to owner of land.

8. 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.

Damages, how ascertained in case of dispute.

9. 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.

Appraisers' fees.

10. 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 ten cents per mile to be computed residence of the Justice to the place where the

ment is made : such pay and travelling fees to be paid by the lessee.

11. 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 Act, 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 not erecting or replacing monuments.

12. 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 &c., monuments.

13. Any penalty under this Act 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.

14. The words following are added at the end of the twenty-fifth section of Chapter 9, of the Revised Statutes, Fourth Series, "Of Mines and Minerals," heretofore the thirtieth section of Chapter 1, of the Acts of 1869, entitled, "An Act to consolidate the Statutes relating to Mines and Minerals," that is to say: "Where an agreement cannot be made with the owner of the land for any such subsequent 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."

Section 25 of Chapter 9, R.S., amended.

Subsequent damages, how ascertained, in case of dispute.

## CHAPTER 6.

### An Act declaratory of the Chapter of the Revised Statutes, "Of Boards of Health and Infectious Diseases."

(Passed the 7th day of May, A. D. 1874.)

SECTION. 1.—"Reasonable Expenses," in section 12, Chapter 29, Revised Statutes, to include medical attendance, &c.

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

1. The words "reasonable expenses," in the twelfth section of Chapter 29 of the Revised Statutes, Fourth Series, "Of Boards of Health and Infectious Diseases," shall be construed to include 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 such Chapter.

"Reasonable Expenses," in section 12, Chapter 29, Revised Statutes, to include medical attendance, &c.,

the requisite amount of real or personal property, or both, to entitle them to vote.

Chapter 14, 1872,  
repealed.

2. Chapter 14 of the Acts of 1872, entitled, "An Act to further amend Chapter 28 of the Acts of 1863, entitled, 'An Act to regulate the Election of Members to serve in the General Assembly,'" is repealed.

## CHAPTER 4.

### An Act to Amend Chapter 28, of the Acts of 1863, regulating the Election of Members to serve in the General Assembly.

(Passed the 7th day of May, A. D., 1874.)

SECTION.

1. Sheriff to receive twenty dollars on return of writ, under section 77, of Chapter 28, 1863.

SECTION.

2. Inconsistent law repealed.

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

Sheriff to receive twenty dollars on return of writ, under section 77 of Chapter 28, 1863.

1. On return of a writ the Sheriff shall hereafter be entitled to receive from the Provincial Treasury the sum of Twenty Dollars for each member returned, instead of Six Dollars, as provided by section 77 of the Act hereby amended.

Inconsistent law repealed.

2. So much of the Act hereby amended, as is inconsistent with this Act, is repealed.

## CHAPTER 5.

## An Act to amend the Law relating to Mines and Minerals.

(Passed the 7th day of May, A. D. 1874.)

## SECTION.

1. All lessees of mining areas, other than gold, to place posts or monuments at corners of areas, within year or six months.
2. Marks on posts or monuments. Proviso as to submarine areas, &c.
3. Manner of placing posts, &c., notices and survey.
4. After forty days, boundaries confirmed.
5. If boundaries not established, Commissioner may cause areas to be defined.
6. Expenses by whom paid. How recovered in certain cases.

## SECTION.

7. Monuments, by whom, when and how replaced.
8. Damage paid to owner of land.
9. Damages how ascertained in case of dispute.
10. Appraiser's fees.
11. Penalty for not erecting or replacing monuments.
12. Penalty for destroying, &c., monuments.
13. Penalties, where and how recovered.
14. Section 25 of Chapter 9 amended. Subsequent damages, how ascertained in case of dispute.

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

1. All lessees of mining areas other than gold mining areas, heretofore leased by the Crown, shall within one year from the passing of this Act, and all lessees of such areas under leases issued after the passing of this Act, 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 of Public Works may hereafter determine.

All lessees of mining areas, other than gold, to place posts or monuments at corners of areas, within year or six months.

2. 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 submarine areas, &c.

3. 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 the purpose of establishing the boundaries of the area and placing the posts

Manner of placing posts, &c., notices and survey.

Damages, how appraised and paid.

poles and brushwood ; and the damage done thereby shall be appraised by three disinterested freeholders, nominated by the nearest Justice of the Peace ; 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.

Certain land, &c exempted from Section 1.

2. Nothing herein contained shall be construed to 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.

Repeal.

3. So much of the existing law, as is inconsistent with this Act, is repealed.

## CHAPTER 11.

### An Act to amend Chapter 52 of the Revised Statutes "Of certain Provisions respecting Railroads."

(Passed the 7th day of May, A.D., 1874.)

SECTION. 1.—Section 10 of Chapter 52 Revised Statutes, how enforced.

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

Section 10, of Chapter 52, Revised Statutes, how enforced.

1. Whenever complaint shall be made to any Justice of the Peace that the provisions of section 10 of Chapter 52 of the Revised Statutes, "Of certain Provisions respecting Railroads," 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.

## CHAPTER 12.

## An Act to alter and amend the Act to encourage the Building of certain Railways.

(Passed the 7th day of May, A. D., 1874.)

## SECTION.

1. Aid to Railways in Chapter 17, 1872, to be as follows:—Western Counties Railway Company. Railway from New Glasgow to Strait of Canso. Spring Hill and Parraboro' Coal and Railway Company.
2. Character and location of roads, to be approved by Governor in Council.
3. Moneys paid as follows:
4. Sums payable in cash or debentures. Debentures described. Security for debentures.
5. Debentures may issue, to what amount, &c. Interest. Principal, when and where payable. Paid to and accepted by Companies at par.

## SECTION.

6. Security to be given, by Spring Hill and Parraboro' Coal and Railway Company. Western Counties Railway Co. Company undertaking Eastern Road.
7. Governor in Council to grant Crown Lands on lines, for track, &c.
8. Western Counties Railway Company may act under Chapter 17, 1872.
9. If no security given for road from New Glasgow to Strait of Canso, Governor may negotiate for road to Louisburg under Chapter 17, 1872.
10. Repeal.

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

1. The aid to the several lines of railway mentioned in Chapter 17, of the Acts of 1872, entitled, "An Act to encourage the Building of certain Railways" shall be as hereinafter specified, that is to say :

(1.) An allotment of Fifty thousand acres of Crown Land in the County of Digby, and one hundred thousand acres in the County of Yarmouth, if there shall be that quantity of ungranted lands in such Counties respectively, and a subsidy of six thousand dollars per mile, to the "Western Counties Railway Company," if they shall construct a line of Railway from Annapolis to the Town of Digby, thence following the general course of the main road to Weymouth, crossing the Sissiboo River within one mile of the present Post Road Bridge, and thence to Yarmouth, such railway to pass within three miles of the bridge by which the Post Road crosses the Meteghan River, if practicable.

(2.) An allotment of one hundred and fifty thousand acres of Crown Lands in the Counties through which a line of railway from New Glasgow to the waters of the Strait of Canso shall pass, and a subsidy of five thousand dollars per mile, to any body corporate or incorporated company that shall construct such line of railway ; and,

(3.) An allotment of ten thousand acres of Crown Land, in the County of Cumberland, and a subsidy of five thousand dollars per mile to the "Spring Hill and Parraborough Coal and Railway Company, limited," if they shall construct

Aid to railways in Chapter 17, 1872, to be as follows :

Western Counties Railway Company.

Railway from New Glasgow to Strait of Canso.

Spring Hill and Parraboro' Coal and Railway Company.

a railway from Spring Hill to Parrsborough, with suitable and sufficient appliances adapted to a large mineral traffic.

and  
roads  
proved  
or in

2. The several lines of railway to be constructed under the provisions of this Act, shall be made on such grades, with such curvatures, and of such class and character, respectively, as the Governor in Council may determine; and the routes and locations of such lines shall also, in all cases, be subject to the approval of the Governor in Council.

id as

3. The aid to be granted to such lines of railway shall be paid as hereinafter provided.

If the "Western Counties Railway Company," in respect of the line of railway from Annapolis to Digby, Weymouth and Yarmouth, the "Spring Hill and Parrsborough Coal and Railway Company, limited," in respect of the line of railway from Spring Hill to Parrsborough, and any incorporated Company, in respect of the line of railway from New Glasgow to the waters of the Strait of Canso, shall offer to construct the same, and shall give assurance or guarantee of their respective ability to prosecute and construct the same to the satisfaction of the Governor in Council, the Governor in Council is hereby authorized and empowered to consent and agree to the building of such lines or any of them by such companies respectively. Any such agreement shall be in the name of the Queen, and shall be subject to and contain such securities, clauses and conditions for protecting the public interests, and for securing the completion of such lines of railway, as the Governor in Council may deem necessary. And so soon as it shall be satisfactorily proven to the Governor in Council that any of such companies shall have *bona fide* expended the sum of forty thousand dollars in actual expenditure on the road undertaken to be built by them, it shall be lawful for the Governor in Council as the works on the several roads progress, to pay to such company the sum of twenty thousand dollars as a portion of such aid, and so on in like manner from time to time *pro rata*, until the whole of the road undertaken by such company shall be fully completed and in efficient operation,—with a gauge of four feet, eight and one-half inches, with all necessary stations and station houses, and with substantial and sufficient locomotives and rolling stock for the accommodation of passengers and the transportation of freight,—when the balance of such aid of six thousand dollars per mile for the railway from Annapolis to Digby, Weymouth and Yarmouth, and the balance of the sum of five thousand dollars per mile for the railways from Spring Hill to Parrsborough, and from New Glasgow to the Strait of Canso, respectively, and no more, shall be paid.

4. The sums payable under and by virtue of this Act:

shall be paid out of any moneys belonging to the Province, or by handing over to the company entitled thereto Provincial debentures, to be issued as hereinafter mentioned, at the option of the Governor in Council. The debentures shall be in the form to be hereafter directed by the Governor in Council: they shall be signed by the Lieutenant Governor, and verified by his seal of office, and also countersigned by the Provincial Treasurer. They shall be numbered consecutively, commencing with number One. Subject to the civil list, the faith and credit of the Province and the ordinary revenues thereof shall be, and hereby are declared pledged to any and every holder of such debentures.

Sums payable in cash or debentures.

Debentures described.

Security for debentures.

5. For the purposes of this Act, the Governor in Council is hereby authorized, from time to time as shall be necessary to issue debentures to an amount not exceeding in the whole One million one hundred thousand dollars, payable in Canada currency, with coupons attached, bearing interest at the rate of six per cent. per annum, payable semi-annually, in such form, verified and authenticated in such manner, in such amounts not less than five hundred dollars each, and on such conditions, as the Governor in Council may prescribe; the principal of such debentures to be paid in full, at the expiration of forty years from the date of issuing them respectively, to the holders thereof, either at the Treasurer's Office at Halifax, or in London, Great Britain; and any debenture so issued shall, if the Governor in Council so direct, be paid, at par, in part of the aid in this Act mentioned, to any of such companies building any of the lines of railway hereinbefore mentioned; and any of such companies shall be bound to accept any such debenture, at par, in lieu of money.

Debentures may issue, to what amount, &c.

Interest

Principal, when and where payable.

Paid to and accepted by Companies at par.

6. To entitle such companies respectively to the benefit of this Act, the "Spring Hill and Parrsborough Coal and Railway Company, limited," shall give security, to the satisfaction of the Governor in Council, to complete the line of railway from Spring Hill to Parrsborough within two years from the passing of this Act; the "Western Counties Railway Company" shall give security, to the satisfaction of the Governor in Council, to complete the line of railway from Annapolis to Digby, Weymouth and Yarmouth, within three years from the passing of this Act; and any incorporated company offering to construct the line of railway from New Glasgow to the Strait of Canso, shall within one year from the passing of this Act enter into a contract with Her Majesty the Queen for its construction and completion within three years from the passing hereof.

Security to be given, by Spring Hill and Parrsborough Coal and Railway Co.

Western Counties Railway Co.

Company undertaking Eastern Road.

7. When any of the lines of railway in this Act mentioned shall pass through Crown Lands, the Governor in Council shall issue free grants to the Company constructing

Governor in Council to grant Crown Lands on lines, for track, &c.



the same of so much of such Crown Lands as may be necessary for track, sidings and stations.

Western Counties Railway Company may act under Chapter 17, 1872.

8. Notwithstanding anything in this Act contained to the contrary; if the "Western Counties Railway Company" aforesaid shall elect to build the railway from Annapolis to Digby, Weymouth and Yarmouth under the provisions of the Act hereby amended relative to such railway according to the requirements of the Governor in Council, instead of under the provisions of this Act, such company shall be entitled to receive the subsidy and Crown Lands in such amended Act mentioned, in place of the aid hereinbefore specified.

If no security given for road from New Glasgow to Strait of Canso, Governor may negotiate for road to Louisburg under Chapter 17, 1872.

9. Provided always that should no company furnish the security required to construct the line of railway from New Glasgow to the Strait of Canso, as contemplated in section three of this Act, according to the true intent and meaning thereof, the Governor in Council shall be at liberty to negotiate with any body corporate to construct the railway from New Glasgow to Louisburg in accordance with the terms and provisions of Chapter 17, of the Acts of 1872, anything herein to the contrary notwithstanding.

Repeal.

10. Section three of the Act hereby amended and such other portions thereof and of any other Act as are inconsistent with this Act are repealed.

## CHAPTER 13.

### An Act for the Preservation of useful Birds and Animals.

(Passed the 7th day of May, A. D. 1874.)

#### SECTION.

1. No Moose to be killed between 1st September, 1874 and 1st September, 1877. Existing law when to be in force.
2. Close season for partridge, woodcock, &c., prescribed. Possession of bird evidence of guilt. Woodcock killed only at certain hours.
3. Each bird a separate offence. Penalties.
4. Penalty for violating Section 1.
5. Proceedings to obtain search warrant.
6. Snares for moose forbidden.

#### SECTION.

7. No Beaver to be killed from 1st September, 1874 to 1st September, 1877.
8. Close season for hares and rabbits. Penalty.
9. Penalty for offences against Sections 13 and 15, of Chapter 73, Revised Statutes.
10. Penalties under Act, how recovered, &c.
11. Commissioners or Wardens, and deputies, their appointment, powers, duties and compensation.
12. Justices of Peace to enforce Act, &c., under penalties.
13. Repeal.

Be it enacted by the Governor, Council and Ass<sup>ts</sup> follows:

1. No person shall kill, or pursue with intent to kill, any moose, or shall expose for sale, or have in his possession any green moose skin, or fresh moose meat, or any part of the carcase of a moose, for the period of three years, commencing on the first day of September, in the present year, and ending on the first day of September, A.D., 1877. Previous to the commencement and after the termination of such period, the provisions contained in the Chapter of the Fourth Series of the Revised Statutes "Of the Preservation of Useful Birds and Animals," with reference to the preservation of moose, shall be in force.

No moose to be killed between 1st September, 1874 and 1st September, 1877.

Existing law when to be in force.

2. No person shall take or kill, or attempt to take or kill any partridge between the first days of January and October in any year, or shall sell, buy or have in his possession any 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, blue-winged duck, or teal, between the first days of March and September 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 partridge, woodcock, &c., prescribed.

Possession of bird evidence of guilt.

Woodcock killed only at certain hours.

Each bird a separate offence.

3. The killing, taking, or having as aforesaid each partridge, 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.

4. Any person violating the first section of this Act shall be liable to a penalty of not less than thirty nor more than fifty dollars for each offence; and the meat, skin, or any part of the moose, if discovered, shall be destroyed.

Penalty for violating Section 1.

5. Whenever any person shall make affidavit before a Stipendiary Magistrate or before a Justice or Justices of the Peace, that he has reason to suspect and does suspect that moose hides are concealed on the premises of any person, it shall be lawful for such Stipendiary Magistrate, Justice or Justices to cause a search warrant to be issued, authorizing the person to whom it is addressed to search such suspected premises, and to seize and to take away any such hides found therein, to be dealt with according to law.

Proceedings to obtain search warrant.

6. No person shall set any snare or trap for the destruction of moose under a penalty of one hundred dollars for each offence; and any person finding any such snare or trap may destroy the same.

Snarcs for moose forbidden.

7. No person shall kill or pursue with intent to kill any beaver, or shall expose for sale or have in his possession any

No Beaver to be killed from 1st September, 1874

to 1st September 1877.

beaver skin or other part of any beaver killed in this Province, for a period of three years, from the first day of September, A. D. 1874; under a penalty of not less than ten nor more than fifteen dollars for each offence.

Close season for hares and rabbits.

8. 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 September 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. 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.

Penalty.

Penalty for offences against Sections 13 and 15 of Chapter 73, Revised Statutes.

9. The penalty for each offence against the thirteenth section of the Chapter of the Revised Statutes, Fourth Series, "Of the Preservation of Useful Birds and Animals," shall be two dollars; and the penalty for each offence against the fifteenth section of such Chapter shall be five dollars.

Penalties, under Act, how recovered, &c.

10. All penalties imposed by this Act may be recovered in a summary manner before a Stipendiary Magistrate or before one or two Justices of the Peace, in the name of any person who may sue for the same, and when recovered shall be paid, one half to the informer and the other half to the prosecutor; and in case the amount of penalty and costs be not paid, the defendant shall be committed to jail and shall not be admitted to the benefit of the Chapter of the Revised Statutes, Third Series, "Of the Relief of Insolvent Debtors," until he shall have undergone an imprisonment, without jail limits, of one day for each dollar of such penalty and costs.

Commissioners or Wardens, and deputies; their appointment, powers, duties and compensation.

11. The Governor in Council shall immediately after the passing of this Act appoint—for each district which shall be hereafter set apart by such Governor in Council for such purpose—a Commissioner or Warden, 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 the carrying out of the laws for the preservation of the inland fisheries of the Province. Such Commissioner or Warden shall have power to appoint in writing deputies under him to assist him in the discharge of his duties. The District Commissioners or Wardens and their deputies shall receive such annual sum for their services, respectively, as the Governor in Council shall determine.

J. P's &c., to enforce Act, &c., under penalties.

12. It shall be the duty of all Justices of the Peace, Stipendiary Magistrates, constables, policemen, and

clerks to enforce the provisions of this Act 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.

13. So much of the Chapter of the Revised Statutes, <sup>Repeal.</sup> Fourth Series, "Of the Preservation of Useful Birds and Animals," or of any other enactment, as is inconsistent with this Act is repealed.

## CHAPTER 14.

### An Act to amend the Chapter of the Revised Statutes "Of Licenses for the Sale of Intoxicating Liquors."

(Passed the 7th day of May, A.D., 1874.)

#### SECTION.

1. Liquors upon premises of person previously convicted, how seized in certain cases.
2. Notice to be given to party accused. Penalty on conviction. After second conviction.
3. Confiscation to be a cumulative penalty.

#### SECTION.

4. Liquors found within mile of mining works, to be destroyed. No licenses in gold district, or within mile of coal mine, &c.
5. Licenses, how to be granted hereafter in City of Halifax.
6. City divided into licensing districts.
7. Repeal.

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

1. 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 the Chapter hereby amended.

Liquors upon premises of person previously convicted, how seized in certain cases.

2. 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.

3. Any person having such liquors so found upon his premises confiscated as aforesaid shall, in addition to such

Confiscation to be a cumulative penalty.

confiscation, be subject to the penalties prescribed in the Chapter hereby amended for violating the provisions of such Chapter.

Liquors found within mile of mining works, to be destroyed.

4. 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 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, or within mile of coal mine, &c.

Licenses, how to be granted hereafter in City of Halifax.

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.

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.

Repeal

7. So much of the Chapter hereby amended, or of any other existing enactment as is inconsistent, with this Act, is repealed.

## CHAPTER 15.

## An Act to prevent the sale of Intoxicating Liquors at Camp Meetings.

(Passed the 7th day of May, A. D., 1874.)

## SECTION.

1. Intoxicating liquors not to be sold within three miles of camp meetings. Penalty.

## SECTION.

2. Arrest and commitment of offenders.
3. Act not to affect hotels, &c.

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

1. 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 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.

Intoxicating liquors not to be sold within three miles of camp meetings.

Penalty.

2. 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 jail 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.

Arrest and commitment of offenders.

3. This Act 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.

Act not to affect hotels, &c.

## CHAPTER 16.

## An Act to provide for the Transfer of Indentures of Apprenticeship in certain cases.

(Passed the 7th day of May, A. D., 1874.)

## SECTION.

1. Indentures, &c., made in the United Kingdom, binding here.
2. Transfer of guardianship, what deemed, and effect of.
3. Managers of charitable institutions, when deemed guardians—their powers as such.
4. Agreement of transfer, how proved.

## SECTION.

5. Several children may be included in one agreement.
6. Certain powers retained, where child placed out under section 3.
7. Penalty for enticing or aiding child to leave guardian, &c.
8. Agreement, proof of guardianship.
9. Application of Act.

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

Indentures, &c., made in United Kingdom, binding here.

Transfer of guardianship, what deemed, and effect of.

Managers of charitable institutions, when deemed guardians—their powers as such.

Agreement of transfer, how proved.

Several children may be included in one agreement.

1. Indentures of apprenticeship or transfers of minors entered into in the United Kingdom, shall be in all respects binding in this Province.

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.

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.

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.

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 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.

6. In the case of a child placed out in this Province as expressed in Section 3 of this Act, the agent of the Committee shall retain all powers of supervision and removal as reserved by him in the contract of transfer of guardianship.

Certain powers retained, where child placed out under Section 3.

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 Act, shall, upon conviction thereof before two justices, be fined the sum of forty dollars.

Penalty for enticing or aiding child to leave guardian. &c.

8. The production of the document mentioned in the fourth and fifth sections of this Act, duly signed as therein mentioned, shall be held to be legal proof of guardianship.

Agreement proof of guardianship.

9. This Act shall apply only to children brought into this Province from abroad.

Application of Act.

## CHAPTER 17.

### An Act declaratory of the Law respecting the qualifications of the Principal Judicial Officers.

(Passed the 7th day of May, A. D. 1874.)

SECTION 1.—Prothonotary, being barrister, deemed 'practising,' under Chapter 89, R. S.

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

1. A barrister holding the office of Prothonotary shall be deemed to be practising, within the intent and meaning of the Chapter of the Fourth Series of the Revised Statutes, "Of the Supreme Court and its Officers."

Prothonotary, being barrister, deemed 'practising,' under Chapter 89, R. S.



## CHAPTER 18.

## An Act to establish County Courts.

(Passed the 7th day of May, A. D., 1874.)

## SECTION.

1. County Courts to be established.
2. Province to be divided into districts.
3. One Judge to be appointed for each district.
4. Judges to preside over County Courts within their respective districts.
5. Length of Sittings of such Courts.
6. Notices of trial, &c.
7. Holding of Chambers.
8. Clerks to be appointed by Governor in Council.
9. Such Clerks to appoint Deputies.
10. Clerk to adjourn Court in case of unavoidable absence of Judge.
11. Judges not to practise during office.
12. Form of oath for Judges.
13. Procedure governed by decisions of Supreme Court.
14. Actions not under jurisdiction of County Courts.
15. Jurisdiction of such Courts.
16. Certain pleadings to be upon affidavit.
17. Judge may change venue.
18. Issuing of process, &c.
19. Powers of Clerks of such Courts. Commissioners.
20. Judgment as in case of non-suit in certain cases.
21. Certain Acts of the Province to apply to these Courts.
22. Clerk of such Court shall file all papers and keep books of record and judgments.
23. Clerk to furnish certificate of judgment when required. Clerk may tax costs in certain cases. Executions.
24. Replevin in such Courts.
25. Proceedings against tenants holding after expiration of their tenancy.
26. Power of such Courts in suits against absent and absconding debtors, &c.
27. Summary jurisdiction of Supreme Court abolished.
28. Executors or administrators may sue and be sued in such Courts.
29. County Courts may issue writs into other Counties.

## SECTION.

30. Causes to be tried without juries, except in certain causes.
31. Sheriff to summon jurors from within five miles of Court House.
32. Jury to consist of five.
33. Such jurors to be subject to like penalties as in Supreme Court.
34. Judges of County Courts to be Justices of the Peace.
35. Judges of such Courts to make rules regulating form of proceedings, to be submitted to Judges of Supreme Court.
36. Such Courts to have same power of amending errors in civil causes as Supreme Court.
37. Penalty for contempt of Court.
38. Sheriff's fees.
39. Affidavits, before whom sworn.
40. Judges may issue orders for prisoners to appear and give evidence in causes.
41. Capias may issue out of such Court.
42. Sheriff to arrest within one month after date of such capias.
43. Further proceedings where party arrested under process to be according to practice of Supreme Court.
44. Practice not provided for by the Act to be arranged by Judge of such County Court.
45. Judge may grant rule for execution for costs.
46. Sheriff's fees.
47. Only Attorneys of Supreme Court to practise in such Courts. Provide Governor in Council to provide seals for County Courts.
48. Fees.
49. Costs of suits defaulted to be taxed by Clerk of Court.
50. Appeal to Supreme Court.
51. County Courts or the judges thereof to have power to grant certain rules and orders.
52. Stay of proceedings upon appeal. &c.
53. Payment of Jurors fees, &c.
54. Jurisdiction of City Court in certain cases abolished.
55. Inconsistent law repealed.
56. Act to go into operation—when.

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

Courts  
stab-

e to be  
into

1. There shall be established in this Province, Courts of Law and of Record to be called County Courts.

2. For the purposes of this Act, this Province shall be divided into seven Districts, to be made up as follows:

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, Antigonishe and Guysborough; and

*District Number Seven*: Of the Counties of Cape Breton, Victoria and Richmond.

3. There shall be one Judge appointed for each district; who shall reside within the district for which he is appointed, and shall hold office during good behavior. Every such Judge shall be a Barrister of the Supreme Court of this Province of not less than seven years standing.

One Judge to be appointed for each district.

4. The Judges of the different districts shall preside over the Courts to be held in the counties comprised within their respective districts; and such courts shall be held for such times and in such places as the Governor in Council shall by proclamation appoint.

Judges to preside over County Courts within their respective districts.

5. The sittings of such courts in the respective counties shall continue so long as the business shall require; but the same shall not continue longer than two days 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.

Length of sittings of such Courts.

6. 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 case: provided that a Judge, at chambers or in Court, on application shall have power to remit a cause to any other party of the county where the Court is holden, if it shall be made to appear to his satisfaction, on affidavit, that such cause can be more conveniently tried in such other place, or that the place of trial named in the notice was selected with a view to harass the defendant, or to put him to needless expense; the costs of which application shall be in the discretion of the Judge.

Notices of trials, &c.

7. The Judges, except when on circuit, shall hold chambers where they reside, for the transaction of Chamber business confined to the business of their respective districts; and, when more convenient, shall set aside one day in each week on which to hold such Chambers: provided always that no Judge shall be obliged to hold such Chambers during the months in which the Supreme Court has vacation.

Holding of Chambers.

8. A Clerk for the several Counties in each district shall be appointed by the Lieutenant Governor in Council, who

Clerks to be appointed by Governor in Council.

shall reside in the Shire Town, shall hold office during pleasure, and shall be paid by fees: provided always, that if any Attorney of the Supreme Court shall be appointed to such office, he shall not practise in the Court in the County for which he holds office during the term of his incumbency.

Such Clerks to  
appoint Deputies.

9. The Clerk shall appoint a deputy in each section in the County where a Court is held, for whose good behaviour and 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.

Clerk to adjourn Court in case of unavoidable absence of Judge.

10. Whenever by reason of unavoidable absence of the Judge, a County Court cannot be held, the Clerk 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 to act, 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 otherwise would have. In like manner, if deemed necessary, the Judge of any district may, in pursuance of an agreement with the Judge of any other district, preside over any Court or Courts held in such other district.

Judges not to practise during office.

11. No Judge of any such Court shall practice, 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.

Form of oath for Judges.

12. Every Judge shall take the following oath before some person appointed by the Governor in Council to administer the same, that is to say:

“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.”

Procedure governed by decisions of Supreme Court.

13. The practise, forms and modes of procedure when not herein provided for, shall be according to the practice of the Supreme Court of this Province, and the Judges of such County Courts shall be governed by the decisions of the Supreme Court.

Actions not under jurisdiction of County Courts.

14. The Court shall not have cognizance of any action—

1st.—Where the title to land is brought in question, or,

2nd.—In which the validity of any devise, bequest or limitation is disputed, except as hereinafter provided, or,

3rd.—For criminal conversation or seduction,

4th.—For breach of promise of marriage, &c.

5th.—Of any action against a Justice of the Peace for any thing done by him in the execution of his office.

15. Subject to the exceptions in the last preceding section, the County Courts shall have jurisdiction and hold plea in all actions *ex contractu* when the debt or damages claimed do not exceed four hundred dollars, and in all actions of torts where the damages claimed do not exceed two hundred dollars, and in actions on bail bonds to a Sheriff in any case in a County Court, whatever may be the penalty or amount sought to be recovered; and all appeals from the Magistrates' Courts in the several counties, shall be to the County Courts sitting in such counties respectively.

Jurisdiction of such Courts.

16. No plea, replication, 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 does contain matter which the deponent believes to be necessary for the party pleading to enable him to go into the merits of his case.

Certain pleadings to be upon affidavit.

17. If the Judge shall be satisfied by either party in a cause in his Court, that such cause can be more conveniently tried in some other County Court, he shall order that the venue be changed, 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 venue; and such cause shall be dealt with in such Court as if originally brought therein.

Judge may change venue.

18. Every process, mesne or final, issued out of such Courts, respectively, shall be directed to the Sheriff of the County where the same is to be executed, and shall be signed and sealed by the Clerk of the County Court or his deputy, where the same is issued; and shall be made returnable in the like times in which process directed to the same County out of the Supreme Court is made returnable: provided always, that where the Sheriff is a party to a cause, all process shall be directed to and executed by a coroner.

Issuing of Process, &c.

19. The Clerk of each Court, or his deputy, shall have and exercise, in reference to proceedings in such Court, the like 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.

Powers of Clerks of such Courts.

Commissioners.

20. Whenever an action is brought in the County Court, which the Court has no jurisdiction to try, judgment

Judgment as in case of non-suit in certain cases.

shall be rendered as in case of a nonsuit, and the defendant shall have execution for his costs accordingly.

Certain Acts of the Province to apply to these Courts.

21. Every Act of this Province relating to the depositions of witnesses before trial, to the proceedings in replevin, to evidence, to the service of process, to practice and proceedings, 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 Act.

Clerk of such Court shall file all papers and keep books of record and judgments.

22. The Clerk of each Court, or his deputy, 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.

Clerk to furnish certificate of judgment when required.

23. The clerk of the County Court 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 of any County 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 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 by default, in such County Court, where particulars are annexed to the writ (except in cases of foreclosure), 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 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 may tax costs in certain cases.

Executions.

Replevin in such Courts.

24. In case the value of the goods, or other property, or effects distrained, taken or detained, does not exceed the sum of two hundred dollars, and in case the title to land be not brought in question, the writ of replevin may issue from the County Court of any County, wherein such property, goods or other effects have been distrained, taken, or detained, and such Court may commence, hold pleas and proceed, according to the course and practice of the Supreme Court.

25. When any tenant shall, after the expiration 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 any County Court 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 six 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 shew cause why he holds over.

Proceedings against tenants holding after expiration of their tenancy.

If the tenant neglect to attend, or attend and no sufficient cause be shewn, 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 exigency of the warrant; and the costs of such proceeding shall be taxed and allowed, and payment thereof may be entered under the warrant.

26. The several County Courts, and the respective Judges thereof, shall have and exercise all the powers and authority vested in the Supreme Court, or the Judges thereof respectively, by Chapter 97 of the Revised Statutes, Fourth Series, "Of Suits against Absent or Absconding Debtors," and by Chapter 137, of the Revised Statutes, Third Series, "Of the Relief of Insolvent Debtors."

Power of such Courts in suits against absent and absconding debtors, &c.

27. The Summary jurisdiction of the Supreme Court is abolished, but all suits and proceedings now pending in the Supreme Court may be carried on to the termination, and judgment and execution shall issue in the same manner as if this Act had not passed.

Summary jurisdiction of Supreme Court abolished.

28. Any Executor or Administrator may sue and be sued in any of the County Courts, in like manner as if he were a party in his own right, 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 the same, in either case, do not exceed four hundred dollars.

Executors or administrators may sue and be sued in such Courts.

29. The County Courts may issue writs of execution and writs of subpoena, 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.

County Courts may issue writs into other Counties.

Causes to be tried without juries, except in certain causes.

30. All causes shall be tried without a jury by the Judge, subject to an appeal to the Supreme Court, who shall decide the facts as well as law; provided that in case the Judge before whom a suit is brought, in which the claim or demand is over eighty dollars, deems it proper to have any fact or facts controverted in the cause tried by a jury, the Clerk shall instantly return a suitable jury of ten persons qualified to serve.

Sheriff to summon jurors from within five miles of Court House.

31. In case there shall not be present at the time such jury is ordered, a sufficient number from which to obtain a jury, the Sheriff or his deputy shall forthwith summon ten men, qualified to serve as petit jurors, living within a distance of five miles from the Court House where the cause is to be tried, who shall be empanelled to try such fact or facts. A challenge of two, without cause, shall be allowed to the plaintiff and defendant.

Jury to consist of five.

32. Five jurors shall be empanelled and sworn for the trial of such facts, four of whom, in case they cannot agree after two hours absence, may render a verdict.

Such jurors to be subject to like penalties as in Supreme Court. Judges of County Courts to be Justices of the Peace.

33. 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.

34. The Judge of each County Court, shall be *ex officio*, a Justice of the Peace in and for the district in which he resides, but shall not issue any civil process in his capacity as such Justice.

Judges of such Courts to make rules regulating forms of proceedings, to be submitted to Judges of Supreme Court.

35. The Judges of the County Courts, or any four of them, may frame rules and orders for regulating the practice of the Courts and the forms of proceedings, and from time to time amend such rules, orders and forms; and the same certified under the hands of such Judges, or any three of them shall be submitted to the Judges of the Supreme Court, a majority of whom may allow, alter or disallow the same, and the rules, orders and forms so allowed or altered, shall be inserted in three issues of the *Royal Gazette*, and shall, from a day to be named by the said Judges of the Supreme Court or a majority of them, be in force in every County Court.

Such Courts to have same power of amending errors in civil causes as Supreme Court.

36. 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 by law vested in the Supreme Court and Judges thereof.

Penalty for contempt of Court.

37. If any person shall be guilty of any wilful contempt or resistance to the process, rules or orders of the County Court, or shall wilfully insult the Judge or any juror, or officer of the Court, during his sitting or attendance in Court, or otherwise misbehave in Court, the Court may punish such offender by fine or imprisonment; but no fine shall exceed fifty dollars, nor shall such imprisonment exceed one month.

38. The Sheriff's fees for executing the warrant under the twenty-fifth section of this Act, shall be the same as for executing a writ of *habere facias possessionem* out of the Supreme Court, and all such fees shall be included in and recoverable under the warrant issued under the same section; provided that the person arrested by virtue of any such warrant shall be detained in custody one day only for every forty cents of the sum stated in the warrant.

Sheriff's fees.

39. All affidavits to be used in the County Courts, or before any Judge thereof, may be sworn before any such Judge or before a Judge of the Supreme Court or any Commissioner for taking affidavits in the Supreme Court.

Affidavits, before whom sworn.

40. A Judge of a County Court upon application, on affidavit, of either party to a suit pending in his Court, may issue an order under his hand and the seal of the Court, for bringing up before such Court any prisoner confined in any jail or prison under any sentence, or under any commitment for trial; or otherwise, or under any process in any civil suit, to be examined as a witness in any cause, suit or matter depending in or for trial before such Court: provided always that the person having the custody of such person shall not be bound to obey such order, unless tender be made to him of a reasonable sum for conveyance and maintenance of a proper officer or officers, and of the prisoner going to, remaining at, and returning from such County Court; and no Sheriff, Jailor, or other officer shall be liable to any action or prosecution for acting in obedience to any such order; and if such action be brought he may plead and give such order in evidence.

Judges may issue orders for prisoners to appear and give evidence in cases.

41. If the plaintiff in any action commenced in the County Courts, and within the jurisdiction thereof, in which the defendant is now liable to arrest, whether upon the order of a Judge or Commissioner, or without such order, shall at, or after the commencement of such action, by affidavit of himself or some other person, show to the satisfaction of any Judge of the County Courts, or any Commissioner authorized to take affidavits in the Supreme Court, that such plaintiff has a cause of action against the defendant to the amount of twenty dollars or upwards, or has sustained damage to that amount, and that the plaintiff has probable cause for believing, and does believe, that the defendant is about to leave the Province, and that he fears the debt will be lost unless such defendant is forthwith arrested, such Judge or Commissioner may, without requiring in such affidavit any statement of the plaintiff's ground for such belief, by a special order, direct that such defendant, who is about to quit the Province, shall be held to bail for the amount of the debt or damage sworn to, or in the case of

Capias may issue out of such Court.



unliquidated damage, for such sum as the Judge or Commissioner may think fit, and thereupon, within the time expressed in such order, and not afterwards, may sue out of the County Court one or more writs of Capias, into one or more counties, as may be required, against any such defendant so directed to be held to bail: provided always that nothing in this section shall operate to prevent a defendant so arrested from negating under affidavit before a County Court, or a Judge, the fact of his being about to leave the Province, and upon such affidavit, if not contradicted, such Judge shall, in his discretion, order his discharge from custody, with or without costs.

Sheriff to arrest within one month after date of such capias.

42. The Sheriff shall within one month after the date of such capias, but not afterwards, proceed to arrest such defendant thereupon; and he shall remain in custody until he shall have given a bail bond to the Sheriff, or shall have made a deposit of the sum endorsed on such writ of capias, together with fifty dollars for costs, and the Sheriff shall make return of his writ immediately upon the execution thereof, or at the expiration of one month from the issuing thereof.

Further proceedings where party arrested under process to be according to practice of Supreme Court.

43. All further proceedings where a party has been arrested under a process issued out of a County Court, including rendering defendants in discharge of bail, shall be according to the practice of the Supreme Court, unless otherwise provided; and the Sheriff shall be charged with the custody of such defendants, in the same manner and as near as may be, as he is charged according to the practice of the Supreme Court.

Practice not provided for by the Act to be arranged by Judge of such County Court.

44. When the time within which, or when, or the mode in which any proceedings should be taken in the County Court or before any Judge, is not prescribed in this Act, or in accordance with the provisions of this Act, such time and mode may be appointed by rules of practice, orders and forms by the Judge thereof.

Judge may grant rule for execution for costs.

45. 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.

Sheriff's fees.

46. The Sheriff shall be allowed for all services performed under this Act the same fees as are now provided for the like services in the Supreme Court.

Only Attorneys of Supreme Court to practise in such Courts. Proviso.

47. Only attorneys of the Supreme Court may practise in the County Courts, as attorneys. Provided however that a party, either plaintiff or defendant, may prosecute or de-

send in person, subject to the same rules of law as are now in force in the Supreme Court.

48. The Governor in Council shall provide seals for the various County Courts; and the Clerk of each County shall provide all necessary books for the records of such Court, which shall be approved of by the Judge and paid for by the Treasurer of the County out of the funds of the County, on the order of the Judge of the County Court of such County.

Governor in Council to provide seals for County Courts

49. The table of fees shall be the same as those in the Supreme Court for like services, with the exception of the brief and counsel fee, which shall not each exceed in any case the sum of twelve dollars, to be taxed in the discretion of the Judge who tries the cause.

Fees.

50. The costs of suits defaulted, and confessed, shall be taxed by the Clerk of the Court: the costs of all contested suits shall be taxed by the Judge before whom the cause was tried.

Costs of suits defaulted to be taxed by Clerk of Court.

51. The decision of the presiding Judge shall be subject to an appeal to the Supreme Court in all causes between forty and eighty dollars, upon the appellant giving a bond to the appellee to respond the judgment of the Supreme Court in manner as is directed in the fifty-third section of this Act.

Appeal to Supreme Court.

52. The several Courts, or the respective Judges thereof, shall have power by rules or orders at Chambers or in term, to set aside judgments by default, to set aside proceedings for irregularity, to grant time for pleading, and to order stay of proceedings till security be given for costs, and may issue summonses, and make orders in all matters of practice, in like manner and on like grounds, and to the same extent as the Supreme Court, or the Judges thereof, and may cause rules on Sheriffs, or any other rules, orders or proceedings thereupon, to be served in any County.

County Court or the judges thereof to have power to give certain rules and orders.

53. In case any party in a cause in any of such Courts, is dissatisfied with the decision of the Judge upon any point of law or fact, or with the finding of the Jury on any fact left to them, or with the decision upon motion for a non-suit, or in arrest of judgment, he may appeal to the Supreme Court; and the Judge at the request of such party, his counsel or attorney, shall stay the proceedings until Judgment be given on appeal, provided the party wishing to appeal give a bond, with sureties to the satisfaction of the Judge, to the opposite party, in a penalty to be fixed by the Judge, conditioned for the payment of the debt and costs, or costs below, and the costs of the appeal awarded by the Supreme Court, if the judgment or decision of the Judge be affirmed; and at the request of the party appellant the Judge shall certify under his hand to the Supreme Court the pleadings in the cause, and all motions, rules or orders made, granted

Stay of proceedings upon appeal, &c.

or refused therein, with his own charge, judgment or decision therein, and when a trial has been had, the evidence and all questions and exceptions thereto, whereupon the matter shall be set down for argument at such time as the Supreme Court shall direct; and that Court shall make such order or directions to the Court below, touching the judgment to be given in the matter, as the law requires, and shall in their discretion award costs to either party, which costs shall be certified and form part of the judgment of the Court below, and upon receipt of such order, directions, and certificate, the Court below shall proceed in accordance therewith.

Payment of jurors, fees, &c.

54. The plaintiff, at the time of issuing every summons, shall pay to the Clerk the sum of twenty-five cents, and on the swearing of the jury in each cause the sum of five dollars, to be taxed in the plaintiff's bill of costs, should he succeed; which sum the Clerk shall retain in his possession and apply towards payment of the jury fees, and at the end of each term shall pay the balances, remaining in his hands, of fees received in the City of Halifax, to the City Treasurer, and in any County to the Treasurer of the County, and shall draw on the respective Treasurers for any deficiency required to pay the jurors, which order shall be certified by the Judge and paid by the Treasurer out of the county funds.

Jurisdiction of City Court in certain cases abolished.

55. The jurisdiction of the City Court for the City of Halifax, in all cases of torts, and for forcible entry and detainer, is abolished, and the same is hereby transferred to the County Court for district number One.

Inconsistent law repealed.

56. So much of the existing law, as is inconsistent with this Act, is repealed.

Act to go into operation—when.

57. This Act shall not go into operation until brought into force by proclamation of the Lieutenant-Governor in Council.

## 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 shew 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 that you levy of 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 that you take the said C. D. and deliver him to the keeper of the jail of the 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.

## CHAPTER 19.

## An Act relating to the Fees of Grand Jurors.

(Passed the 7th day of May, A. D., 1874.)

## SECTION.

1. Fees of Grand Jurors at Supreme Court to be same as at Sessions.

## SECTION.

2. Fees to be a county charge.
3. Repeal.
4. Act when to begin.

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

Fees of Grand Jurors at Supreme Court to be same as at Sessions.

1. Every Grand Juror shall hereafter be entitled to receive the same fees for attendance at the Supreme Court, and for travelling in connection with such attendance, as are now allowed for travel and attendance at general sessions.

Fees to be a county charge.

2. The amount of such fees for travel and attendance, at the Supreme Court shall be a county or district charge, to be added to the general assessment of the county or district, and to be ascertained and paid as provided with reference to the fees of Grand Jurors for attendance at General Sessions by Chapter 8 of the Acts of 1872.

Repeal.

3. So much of the existing law as is inconsistent with this Act, is repealed.

Act when to begin.

4. This Act shall not go into operation until the first day of January, 1875.

## CHAPTER 20.

## An Act respecting the Appointment of Queen's Counsel.

(Passed the 7th day of May, A. D. 1874.)

Preamble. SECTION. 1.—Power to appoint Queen's Counsel for Province vested in Lieutenant Governor.

Preamble.

Whereas, the Lieutenant Governor of right ought to have the power to appoint, from among the members of the Bar of Nova Scotia, provincial officers, who may assist in the conduct of all matters on behalf of the Crown, under the name of Her Majesty's Counsel Learned in the Law for such Province: And whereas, doubts have been cast on the power of the Lieutenant Governor to make such appointments:

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

1. It was and is lawful for the Lieutenant Governor, by letters patent under the Great Seal of the Province of Nova Scotia, to appoint, from among the members of the Bar of Nova Scotia, such persons as he may deem right, to be, during pleasure, Provincial Officers, under the name of Her Majesty's Counsel Learned in the Law for the Province of Nova Scotia.

Power to appoint Queen's Counsel for Province vested in Lieutenant Governor.

## CHAPTER 21.

### An Act to regulate the Precedence of the Bar in Nova Scotia.

(Passed the 7th day of May, A. D., 1874.)

#### SECTION.

- Preamble.  
 1. Order of precedence regulated.  
 2. Precedence of Q. C.'s appointed after 1st July, 1867, and of Barristers holding patents of precedence.

#### SECTION.

3. Precedence of other Barristers determined by seniority.  
 4. Act not to affect precedence of Barrister acting for Queen or for Attorney General.

Whereas, the regulation of the Bar in Nova Scotia is vested in the Provincial Legislature, and it is expedient for the orderly conduct of business before the Provincial Courts that provision be made for the order of precedence of the members of such Bar in such Courts.

Preamble.

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

1. The following members of the Bar in this Province shall have precedence in the Courts of the Province in the following order :

Order of precedence regulated.

(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 of our Lord 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 of appointment as such Counsel.

2. Members of the Bar from time to time appointed after the first day of July, in the year of our Lord one thousand eight hundred and sixty-seven, to be Her Majesty's Counsel for the Province, and members of the Bar to whom from time to time patents of precedence are granted, shall sever-

Precedence of Q. C.'s appointed after 1st July, 1867, and of Barristers holding patents of precedence.

ally have such precedence in such Courts as may be assigned to them by letters patent, which may be issued by the Lieutenant Governor under the Great Seal of the Province.

Precedence of other Barristers determined by seniority.

3. The remaining members of the Bar, shall, as between themselves, have precedence in the Courts in the order of their call to the Bar.

Act not to affect precedence of Barrister acting for Queen or for Attorney General.

4. Nothing in this Act shall in anywise affect or alter any right of precedence which may appertain to 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; but such right and precedence shall remain as if this Act had not been passed.

## CHAPTER 22.

An Act declaratory of Chapter 22, of the Acts of 1872, entitled, "An Act to amend the Act to improve the Administration of Justice."

(Passed the 7th day of May, A.D., 1874.)

### SECTION.

1. Powers of Judges under Section 3, of Chapter 22, 1872, to extend to regular sittings at Halifax.

### SECTION.

2. Order for two concurrent sittings in such case same as under Chapter 22, 1872.
3. Order published 15th April, 1874, legalized.

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

Powers of Judges under Section 3, of Chapter 22, 1872, to extend to regular sittings at Halifax.

1. All the powers given to the Judges by the third section of Chapter 22 of the Acts of 1872, entitled, "An Act to amend the Act to improve the Administration of Justice," shall be held to extend to, and may be exercised relatively to the regular sittings of the Supreme Court at Halifax.

Order for two concurrent sittings in such case same as under Chapter 22, 1872.

2. An order for two concurrent sittings of the Supreme Court for the trial of causes to be held at the same time in either of the regular sittings at Halifax, may be made by the Judges in the same manner and with the like incidents, as if a power to make the same had been expressly given in and by such section.

Order published 15th April, 1874, legalized.

3. The order made by the Judges, and published in the *Gazette* newspaper on the fifteenth day of April, 1874, for the holding of two concurrent sittings of the Supreme Court for the April sittings of the present year, at Halifax, is declared to be legal, notwithstanding any doubt that may be entertained as to the validity thereof at the time of its publication.

## CHAPTER 23.

An Act to facilitate the Proof of Telegraphic Messages,  
Letters, and other Writings.

(Passed the 7th day of May, A. D. 1874.)

## SECTION.

1. When due notice given, copy of telegram, &c., admitted in evidence, in lieu of original. Proviso. Costs.

## SECTION.

2. Inconsistent law repealed.

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

1. In any action, suit or other proceeding at law or in equity, in the cases of telegraphic messages, letters, shipping bills, bills of lading, delivery orders, receipts, accounts and other written instruments used in business and other transactions, where, according to the rules of law existing at the passing of this Act, it would be necessary to produce and prove the original documents, the party intending to establish in proof the contents of any such original document may give notice to the opposite party, ten days at least before the trial or other proceeding in which such proof is intended to be adduced, that he intends, at such trial or other proceeding, to give in evidence, as proof of such contents, an instrument purporting to be a copy of such document, and which may then be inspected by such opposite party at some convenient time and place; and in every such case such copy shall, without further proof, be sufficient evidence of the contents of such original document, and be taken in lieu of such original: provided always, that in case the party receiving such notice does, within three days after the time mentioned therein for such inspection, give notice that he intends to dispute the correctness or genuineness of such copy at such trial or proceeding, and to require proof of the original, he shall be at liberty so to do; and the Court or Judge before whom such question is raised may direct by which of the parties the costs which may thereupon attend any production in proof of the original document, according to the law heretofore existing, shall be paid.

When due notice given, copy of telegram, &c., admitted in evidence, in lieu of original.

Proviso.

Costs.

2. So much of the Chapter of the Revised Statutes relating to witnesses and evidence, or of any other existing enactment, as is inconsistent with this Act, is repealed.

Inconsistent law repealed.



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